

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)**  
**Act 451 of 1994**

CHAPTER 3  
WASTE MANAGEMENT

PART 111  
HAZARDOUS WASTE MANAGEMENT

**324.11101 Meanings of words and phrases.**

Sec. 11101. For the purposes of this part, the words and phrases defined in sections 11102 to 11104 have the meanings ascribed to them in those sections.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**324.11102 Definitions; B to F.**

Sec. 11102. (1) "Board" means a site review board created in section 11117.

(2) "Contaminant" means any of the following:

(a) Hazardous waste as defined in R 299.9203 of the Michigan administrative code.

(b) Any hazardous waste or hazardous constituent listed in appendix VIII of part 261 or appendix IX of part 264 of title 40 of the code of federal regulations.

(3) "Corrective action" means an action determined by the department to be necessary to protect the public health, safety, or welfare, or the environment, and includes, but is not limited to, investigation, evaluation, cleanup, removal, remediation, monitoring, containment, isolation, treatment, storage, management, temporary relocation of people, and provision of alternative water supplies, or any corrective action allowed under title II of the solid waste disposal act or regulations promulgated pursuant to that act.

(4) "Designated facility" means a hazardous waste treatment, storage, or disposal facility that has received a permit or has interim status under the solid waste disposal act or has a permit from a state authorized under section 3006 of subtitle C of the solid waste disposal act, 42 U.S.C. 6926, and which, if located in this state, has an operating license issued under this part, has a legally binding agreement with the department that authorizes operation, or is subject to the requirements of section 11123(5).

(5) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of a hazardous waste into or on land or water in a manner that the hazardous waste or a constituent of the hazardous waste may enter the environment, be emitted into the air, or be discharged into water, including groundwater.

(6) "Disposal facility" means a facility or a part of a facility where managed hazardous waste, as defined by rule, is intentionally placed into or on any land or water and at which hazardous waste will remain after closure.

(7) "Failure mode assessment" means an analysis of the potential major methods by which safe handling of hazardous wastes may fail at a treatment, storage, or disposal facility.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

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**324.11103 Definitions; G to O.**

Sec. 11103. (1) "Generation" means the act or process of producing hazardous waste.

(2) "Generator" means any person, by site, whose act or process produces hazardous waste as identified or listed pursuant to section 11128 or whose act first causes a hazardous waste to become subject to regulation under this part.

(3) "Hazardous waste" means waste or a combination of waste and other discarded material including

solid, liquid, semisolid, or contained gaseous material that because of its quantity, quality, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating but reversible illness, or may pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed. Hazardous waste does not include material that is solid or dissolved material in domestic sewage discharge, solid or dissolved material in an irrigation return flow discharge, industrial discharge that is a point source subject to permits under section 402 of title IV of the federal water pollution control act, chapter 758, 86 Stat. 880, 33 U.S.C. 1342, or is a source, special nuclear, or by-product material as defined by the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(4) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, recycling, and disposal of hazardous waste.

(5) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, or an underground mine or cave.

(6) "Land treatment facility" means a treatment facility or part of a treatment facility at which hazardous waste is applied onto or incorporated into the soil surface. If waste will remain after closure, a facility described in this subsection is a disposal facility.

(7) "Limited storage facility" means a storage facility that meets all of the following conditions:

(a) Has a maximum storage capacity that does not exceed 25,000 gallons of hazardous waste.

(b) Storage occurs only in tanks or containers.

(c) Has not more than 200 containers on site that have a capacity of 55 gallons or less.

(d) Does not store hazardous waste on site for more than 90 days.

(e) Does not receive hazardous waste from a treatment, storage, or disposal facility.

(8) "Manifest" means a form approved by the department used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(9) "Manifest system" means the system used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(10) "Mechanism" means a letter of credit, a financial test that demonstrates the financial strength of the company owning a treatment, storage, or disposal facility or a parent company guaranteeing financial assurance for a subsidiary, or an insurance policy that will provide funds for closure or postclosure care of a treatment, storage, or disposal facility.

(11) "Municipal solid waste incinerator" means an incinerator that is owned or operated by any person, and that meets all of the following requirements:

(a) The incinerator receives solid waste from off site and burns only household waste from single and multiple dwellings, hotels, motels, and other residential sources, or burns this household waste together with solid waste from commercial, institutional, municipal, county, or industrial sources that, if disposed of, would not be required to be placed in a disposal facility licensed under this part.

(b) The incinerator has established contractual requirements or other notification or inspection procedures sufficient to assure that the incinerator receives and burns only waste referred to in subdivision (a).

(c) The incinerator meets the requirements of this part and the rules promulgated under this part.

(d) The incinerator is not an industrial furnace as defined in 40 C.F.R. 260.10.

(12) "Municipal solid waste incinerator ash" means the substances remaining after combustion in a municipal solid waste incinerator.

(13) "Municipality" means a city, village, township, or Indian tribe.

(14) "On site" means on the same or geographically contiguous property that may be divided by a public or private right-of-way if the entrance and exit between the pieces of property are at a crossroads intersection and access is by crossing rather than going along the right-of-way. On site property includes noncontiguous pieces of property owned by the same person but connected by a right-of-way that the owner controls and to which the public does not have access.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

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### **324.11104 Definitions; O to V.**

Sec. 11104. (1) "Operator" means the person responsible for the overall operation of a disposal, treatment, or storage facility with approval of the department either by contract or license.

(2) "Site identification number" means a number that is assigned by the United States environmental protection agency or the United States environmental protection agency's designee to each generator, each transporter, and each treatment, storage, or disposal facility. If the generator or transporter or the treatment, storage, or disposal facility manages wastes that are hazardous under this part and the rules promulgated under this part but are not hazardous under the solid waste disposal act, site identification number means an equivalent number that is assigned by the department.

(3) "Solid waste" means that term as it is defined in part 115.

(4) "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(5) "Storage facility" means a facility or part of a facility where managed hazardous waste, as defined by rule, is subject to storage. A generator who accumulates managed hazardous waste, as defined by rule, on site in containers or tanks for less than 91 days or a period of time prescribed by rule is not a storage facility.

(6) "Surface impoundment" or "impoundment" means a treatment, storage, or disposal facility or part of a treatment, storage, or disposal facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with human-made materials, that is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and that is not an injection well. Surface impoundments include, but are not limited to, holding, storage, settling, and aeration pits, ponds, and lagoons.

(7) "The solid waste disposal act" means title II of Public Law 89-272, 42 U.S.C. 6901, 6902 to 6907, 6911, 6912 to 6914a, 6915 to 6916, 6921 to 6939e, 6941, 6942 to 6949a, 6951 to 6956, 6961 to 6964, 6971 to 6979b, 6981 to 6987, 6991 to 6991i, and 6992 to 6992k.

(8) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

(9) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste, to neutralize the waste, to recover energy or material resources from the waste, or to render the waste nonhazardous or less hazardous, safer to transport, store, or dispose of, amenable to recovery, amenable to storage, or reduced in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(10) "Treatment facility" means a facility or part of a facility where managed hazardous waste, as defined by rule, is subject to treatment.

(11) "Updated plan" means the updated state hazardous waste management plan prepared under section 11110.

(12) "Vehicle" means a transport vehicle as defined in 49 C.F.R. 171.8.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

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### **324.11105 Generation, disposition, storage, treatment, or transportation of hazardous waste.**

Sec. 11105. A person shall not generate, dispose, store, treat, or transport hazardous waste in this state without complying with the requirements of this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

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**Popular name:** NREPA

### **324.11105a Repealed. 2006, Act 560, Eff. Dec. 29, 2008.**

**Compiler's note:** The repealed section pertained to adoption by reference of federal rules and promulgation of administrative rule.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11106 Municipal solid waste incinerator ash; regulation.**

Sec. 11106. The generation, transportation, treatment, storage, disposal, reuse, and recycling of municipal solid waste incinerator ash is regulated under part 115, and not under this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

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**Popular name:** NREPA

### **324.11107 Methods of hazardous waste management; assistance.**

Sec. 11107. The department and the board, in the conduct of their duties as prescribed under this part, shall assist in encouraging, developing, and implementing methods of hazardous waste management that are environmentally sound, that maximize the utilization of valuable resources, and that encourage resource conservation, including source separation, recycling, and waste reduction, and that are consistent with the plan to be provided by the department of public health pursuant to section 12103(d) of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.12103 of the Michigan Compiled Laws. In addition, the director, the department, and the board, in the conduct of their duties as prescribed by this part, shall assist in implementing the policy of this state to minimize the placement of untreated hazardous waste in disposal facilities.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11108 Landfill or solidification facility; payment of fee by owner or operator; certain hazardous waste exempt from fees; certification; evaluating accuracy of generator fee exemption certifications; enforcement action; forwarding fee revenue and completed form; reduction in hazardous waste generated or disposed; refund; disposition of fees; waste reduction fund.**

Sec. 11108. (1) Except as otherwise provided in this section, each owner or operator of a landfill shall pay to the department a fee assessed on hazardous waste disposed of in a landfill. The fee shall be based on the quantity of hazardous waste specified on the manifest or monthly operating report and shall be \$10.00 per ton, \$10.00 per cubic yard, or 1/2 cent per pound depending on the unit of measure used by the owner or operator to calculate the fee. The fee for fractional quantities of hazardous waste shall be proportional. If the hazardous waste is required to be listed on a manifest and the owner or operator of the landfill determines that the hazardous waste quantity figure on the manifest is not accurate, the owner or operator shall correct the hazardous waste quantity figure on all manifest copies accompanying the shipment, note the reason for the changes in the discrepancy indication space on the manifest, and assess the fee in accordance with the corrected hazardous waste quantity figure. Payment shall be made within 30 days after the close of each quarter. The landfill owner or operator shall assess off-site generators the fee. The fee for hazardous waste that is generated and disposed of on the site of a landfill owner or operator shall be paid by that owner or operator.

(2) Except as otherwise provided in this section, each owner or operator of a solidification facility licensed pursuant to section 11123 shall pay to the department a fee assessed on hazardous waste received at the solidification facility. The fee shall be based on the quantity of hazardous waste specified on the manifest or monthly operating report and shall be \$10.00 per ton, \$10.00 per cubic yard, 4 cents per gallon, or 1/2 cent per pound depending on the unit of measure used by the owner or operator to calculate the fee. The fee for

fractional quantities of hazardous waste shall be proportional. If the hazardous waste is required to be listed on a manifest and the owner or operator of the solidification facility determines that the hazardous waste quantity figure on the manifest is not accurate, the owner or operator shall correct the hazardous waste quantity figure on all manifest copies accompanying the shipment, note the reason for the change in the discrepancy indication space on the manifest, and assess the fee in accordance with the corrected hazardous waste quantity figure. Payment shall be made within 30 days after the close of each quarter. The solidification facility owner or operator shall assess off-site generators the fee. The fee for hazardous waste that is generated and solidified on the site of a solidification owner or operator shall be paid by that owner or operator.

(3) The following hazardous waste is exempt from the fees provided for in this section:

(a) Ash that results from the incineration of hazardous waste or the incineration of solid waste as defined in part 115.

(b) Hazardous waste exempted by rule because of its character or the treatment it has received.

(c) Hazardous waste that is removed from a site of environmental contamination that is included in a list submitted to the legislature pursuant to section 20105, or hazardous waste that is removed as part of a site cleanup activity at the expense of the state or federal government.

(d) Solidified hazardous waste produced by a solidification facility licensed pursuant to section 11123 and destined for land disposal.

(e) Hazardous waste generated pursuant to a 1-time closure or site cleanup activity in this state if the closure or cleanup activity has been authorized in writing by the department. Hazardous waste resulting from the cleanup of inadvertent releases which occur after March 30, 1988 is not exempt from the fee.

(f) Primary and secondary wastewater treatment solids from a wastewater treatment plant that includes an aggressive biological treatment facility as defined in section 3005(j)(12)(B) of subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6925.

(g) Emission control dust or sludge from the primary production of steel in electric furnaces.

(4) An owner or operator of a landfill or solidification facility shall assess or pay the fee described in this section unless a written signed certification is provided by the generator indicating that the hazardous waste is exempt from the fee. If the hazardous waste that is exempt from the fee is required to be listed on a manifest, the certification shall contain the manifest number of the shipment and the specific fee exemption for which the hazardous waste qualifies. If the hazardous waste that is exempt from the fee is not required to be listed on a manifest, the certification shall provide the volume of exempt hazardous waste, the waste code or waste codes of the exempt waste, the date of disposal or solidification, and the specific fee exemption for which the hazardous waste qualifies. The owner or operator of the landfill or solidification facility shall retain this certification for 4 years from the date of receipt.

(5) The department or a health department certified pursuant to section 11145 shall evaluate the accuracy of generator fee exemption certifications and shall take enforcement action against a generator who files a false certificate. In addition, the department shall take enforcement action to collect fees that are not paid as required by this section.

(6) The landfill owner or operator and the solidification facility owner or operator shall forward fee revenue due to the department with a completed form that is provided or approved by the department. The owner or operator shall certify that all information provided in the form is accurate. The form shall include the following information:

(a) The volume of hazardous waste subject to a fee.

(b) The name of each generator who was assessed a fee, the generator's identification number, manifest numbers, hazardous waste volumes, and the amount of the fee assessed.

(7) A generator who documents to the department, on a form provided by the department, a reduction in the amount of hazardous waste generated as a result of a process change, or documents a reduction in the amount of hazardous waste that is being disposed of in a landfill, either directly or following solidification at a solidification facility, as a result of a process change or the generator's increased use of source separation, input substitution, process reformulation, recycling, treatment, or an exchange of hazardous waste that results in a utilization of that hazardous waste, is eligible for a refund from the state. The refund shall be in the amount of \$10.00 per ton, \$10.00 per cubic yard, 4 cents per gallon, or 1/2 cent per pound of hazardous waste reduced or managed through an alternative to landfill disposal. A generator is not eligible to receive a refund for that portion of a reduction in the amount of hazardous waste generated that is attributable to a decrease in the generator's level of production of the products that resulted in the generation of the hazardous waste.

(8) A generator seeking a refund shall calculate the refund due by comparing hazardous waste generation, treatment, and disposal activity in the calendar year immediately preceding the date of filing with hazardous waste generation, treatment, and disposal activity in the calendar year 2 years prior to the date of filing.

(9) To be eligible for a refund, a generator shall file a request with the department by June 30 of the year



following the year for which the refund is being claimed.

(10) A refund shall not exceed the total fees paid by the generator to the landfill operator or owner and the solidification facility operator or owner.

(11) A form submitted by the generator as provided for in subsection (7) shall be certified by the generator or the generator's authorized agent.

(12) The department shall maintain information regarding the landfill disposal fees received and refunds provided under this section.

(13) The fees collected under this section shall be forwarded to the state treasurer and deposited in the waste reduction fund created in subsection (14).

(14) The waste reduction fund is created within the state treasury. The state treasurer may receive money or other assets from any source for deposit into the waste reduction fund. The state treasurer shall direct the investment of the waste reduction fund. The state treasurer shall credit to the waste reduction fund interest and earnings from waste reduction fund investments. Money in the waste reduction fund at the close of the fiscal year shall remain in the waste reduction fund and shall not lapse to the general fund. Money from the waste reduction fund shall be expended, upon appropriation, only for 1 or more of the following purposes:

(a) To pay refunds to generators under this section.

(b) To fund programs created under part 143 and part 145.

(c) Not more than \$500,000.00 to implement section 3103a.

(d) For state fiscal years 2002 and 2003, to fund programs created under part 111.

(e) Not more than \$500,000.00 to implement section 5419.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11110 State hazardous waste management plan; preparation; contents; studies; incentives; criteria; notice; news release; public hearings; comments; amendments.**

Sec. 11110. (1) Not later than January 1, 1990, the department shall prepare an updated state hazardous waste management plan.

(2) The updated plan shall:

(a) Update the state hazardous waste management plan adopted by the commission on January 15, 1982.

(b) Be based upon location of generators, health and safety, economics of transporting, type of waste, and existing treatment, storage, or disposal facilities.

(c) Include information generated by the department of commerce and the department on hazardous waste capacity needs in the state.

(d) Include information provided by the office of waste reduction created in part 143.

(e) Plan for the availability of hazardous waste treatment or disposal facilities that have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the state during the 20-year period after October 1, 1988, as is described in section 104(c)(9)(A) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 U.S.C. 9604.

(f) Plan for a reasonable geographic distribution of treatment, storage, and disposal facilities to meet existing and future needs, including proposing criteria for determining acceptable locations for these facilities. The criteria shall include a consideration of a location's geology, geography, demography, waste generation patterns, along with environmental factors, public health factors, and other relevant characteristics as determined by the department.

(g) Emphasize a shift away from the practice of landfilling hazardous waste and toward the in-plant reduction of hazardous waste and the recycling and treatment of hazardous waste.

(h) Include necessary legislative, administrative, and economic mechanisms, and a timetable to carry out the plan.

(3) The department shall instruct the office of waste reduction created in part 143 to complete studies as considered necessary for the completion of the updated plan. The studies may include:

(a) An inventory and evaluation of the sources of hazardous waste generation within this state or from other states, including the types, quantities, and chemical and physical characteristics of the hazardous waste.

(b) An inventory and evaluation of current hazardous waste management, minimization, or reduction practices and costs, including treatment, disposal, on-site recycling, reclamation, and other forms of source reduction within this state.

(c) A projection or determination of future hazardous waste management needs based on an evaluation of existing capacities, treatment or disposal capabilities, manufacturing activity, limitations, and constraints. Projection of needs shall consider the types and sizes of treatment, storage, or disposal facilities, general locations within the state, management control systems, and an identified need for a state owned treatment, storage, or disposal facility.

(d) An investigation and analysis of methods, incentives, or technologies for source reduction, reuse, recycling, or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste.

(e) An investigation and analysis of methods and incentives to encourage interstate and international cooperation in the management of hazardous waste.

(f) An estimate of the public and private cost of treating, storing, or disposing of hazardous waste.

(g) An investigation and analysis of alternate methods for treatment and disposal of hazardous waste.

(4) If the department finds in preparing the updated plan that there is a need for additional treatment or disposal facilities in the state, then the department shall identify incentives the state could offer that would encourage the construction and operation of additional treatment or disposal facilities in the state that are consistent with the updated plan. The department shall propose criteria which could be used in evaluating applicants for the incentives.

(5) Upon completion of the updated plan, the department shall publish a notice in a number of newspapers having major circulation within the state as determined by the department and shall issue a statewide news release announcing the availability of the updated plan for inspection or purchase at cost by interested persons. The announcement shall indicate where and how the updated plan may be obtained or reviewed and shall indicate that not less than 6 public hearings shall be conducted at varying locations in the state before formal adoption. The first public hearing shall not be held until 60 days have elapsed from the date of the notice announcing the availability of the updated plan. The remaining public hearings shall be held within 120 days after the first public hearing at approximately equal time intervals.

(6) After the public hearings, the department shall prepare a written summary of the comments received, provide comments on the major concerns raised, make amendments to the updated plan, and determine whether the updated plan should be adopted.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11111 State hazardous waste management plan; adoption or rejection; reason for rejection; return of plan; changing and reconsidering plan.**

Sec. 11111. (1) The department, with the advice of the director of public health, shall adopt or reject the updated plan within 60 days.

(2) If the department rejects the updated plan, it shall indicate its reason for rejection and return the updated plan for further work.

(3) The department shall make the necessary changes and reconsider the updated plan within 30 days after receipt of the rejection.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11112 State hazardous waste management plan; final decision; adoption.**

Sec. 11112. The department shall make a final decision on the updated plan within 120 days after the department first receives the updated plan. If the department fails to formally adopt or reject the updated plan within 120 days, the updated plan is considered adopted.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11114 Proposed rules to implement plan.**

Sec. 11114. Not more than 180 days after the final adoption of the updated plan, the department shall

submit to the legislature proposed rules to implement the updated plan created in section 11110.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11115 Permits and licenses for treatment, storage, or disposal facility; determination; exception.**

Sec. 11115. After the updated plan is adopted, the department shall not issue a permit or license under this part for a treatment, storage, or disposal facility until the department has made a determination that the action is consistent with the updated plan. This section does not apply to a treatment, storage, or disposal facility granted a construction permit or a license under this part before the final adoption of the updated plan. However, such a facility shall be consistent with the state hazardous waste management plan adopted by the commission on January 15, 1982.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

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### **324.11115a Facility subject to corrective action requirements; release of contaminant from waste management unit or release of hazardous waste from facility; determination by department; consent order; license, permit, or order; contents.**

Sec. 11115a. (1) Beginning on June 4, 1992, the owner or operator, or both, of a facility specified in this subsection is subject to the corrective action requirements specified in this part and the rules promulgated under this part for all releases of a contaminant from any waste management unit at the facility, regardless of when the contaminant may have been placed in or released from the waste management unit. This requirement applies to a facility for which the owner or operator, or both, is applying for or has been issued a license under this part.

(2) Beginning on June 4, 1992, if the department, on the basis of any information, determines that there is or has been a release of a contaminant from any waste management unit at the facility, the department may order, or may enter a consent order with an owner or operator, or both, of a facility specified in subsection (1), requiring corrective action at the facility. A license, permit, or order issued or entered pursuant to this subsection shall contain all of the following:

(a) Schedules of compliance for corrective action if corrective action cannot be completed before the issuance of the license, permit, or order.

(b) Assurances of financial responsibility for completing the corrective action.

(c) Requirements that corrective action be taken beyond the facility boundary if the release of a contaminant has or may have migrated or otherwise has or may have been emitted beyond the facility boundary, unless the owner or operator of the facility demonstrates to the satisfaction of the department that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake this corrective action.

(3) Beginning on June 4, 1992, the owner or operator, or both, of a facility specified in this subsection and not in subsection (1) is subject to the corrective action requirements specified in this part and the rules promulgated under this part for all releases of a hazardous waste from the facility, regardless of when the hazardous waste may have been placed in or released from the facility. This requirement applies to a facility for which the owner or operator, or both, is or was subject to the interim status requirements defined in the solid waste disposal act, except for those facilities that have received formal written approval of the withdrawal of their United States environmental protection agency part A hazardous waste permit application from the department or the United States environmental protection agency.

(4) Beginning on June 4, 1992, if the department, on the basis of any information, determines that there is or has been a release of a hazardous waste, the department may order, or may enter a consent order with, an owner or operator, or both, of a facility specified in subsection (3), requiring corrective action at the facility. An order issued or entered pursuant to this subsection shall contain both of the following:

(a) Schedules of compliance for corrective action.

(b) Assurances of financial responsibility for completing the corrective action.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995.

**Popular name:** Act 451



**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**Administrative rules:** R 299.9101 et seq. of the Michigan Administrative Code.

#### **324.11115b Corrective actions; satisfaction of remedial action obligations.**

Sec. 11115b. Corrective actions conducted pursuant to this part satisfy a person's remedial action obligations under part 201 and remedial obligations under part 31 for that release or threat of release.

**History:** Add. 1995, Act 37, Imd. Eff. May 17, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

#### **324.11116 Expansion, enlargement, or alteration of treatment, storage, or disposal facility; review; construction permit; local ordinance, permit requirement, or other requirement not abridged or altered; new proposal.**

Sec. 11116. (1) A treatment, storage, or disposal facility in existence on January 1, 1980, or a treatment, storage, or disposal facility in existence on November 19, 1980, for which approval of construction has been received under part 55, is not subject to a review of the board and does not require a construction permit under this part except for an expansion, enlargement, or alteration of the treatment, storage, or disposal facility beyond its original authorized design capacity or beyond the area specified in the operating license, original construction permit, or other authorization. This subsection does not abridge or alter the effect of a local ordinance, permit requirement, or other requirement on the construction of a treatment, storage, or disposal facility described in this subsection.

(2) The expansion, enlargement, or alteration of a treatment, storage, or disposal facility in existence on January 1, 1980, constitutes a new proposal for which a construction permit is required.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

#### **324.11117 Site review board; establishment; purpose; review of site applications concurrently; granting or denying final approval of site applications individually; appointment, qualifications, and terms of board members; chairperson; vacancy; notice of construction permit application; quorum; legal action; meetings; staff assistance; duties of existing site review board.**

Sec. 11117. (1) A site review board shall be established to review and recommend to the department whether the department should grant or deny final approval for each site construction permit application that is referred to the board by the department. If more than 1 construction permit application for interrelated facilities on a single site within the same municipality are submitted by the same applicant, reviewed concurrently by the department, and referred to the board by the department, a single board shall be established to review the site applications concurrently but shall recommend the granting or denial of final approval for each application individually. A board shall consist of 9 voting members and a nonvoting chairperson to be appointed as provided in subsection (2).

(2) The following 9 members and 1 nonvoting chairperson shall serve on every board established to review a site construction permit application:

(a) Seven members shall be members appointed by the governor, with the advice and consent of the senate. The 7 members on each board shall include a geologist, a chemical engineer, and a toxicologist, each of whom are on the faculty of an institution of higher education within the state, a representative from a manufacturing industry, 2 representatives of the public, and a representative of a municipality. Subject to the other requirements of this subdivision, the governor may appoint more than 1 geologist, chemical engineer, toxicologist, representative from a manufacturing industry, and representative of a municipality and more than 2 representatives of the public. However, only 1 geologist, chemical engineer, toxicologist, representative from a manufacturing industry, and representative of a municipality and only 2 representatives of the public, as randomly designated by the department, shall serve on a particular board. The member who represents municipalities shall be associated with a municipality or municipal association that is or represents the same type of municipality in which a facility is proposed to be located. A member representing a municipality or the public shall not serve on a site review board that is evaluating an application for a facility located within a

county or municipality that directly employs the member or in which the member resides. A vacancy shall be filled for the unexpired portion of the period in the same manner as the original appointments. All members appointed by the governor, including a chairperson appointed pursuant to subdivision (c), shall be appointed to serve on site review boards for a period of 3 years, and may be appointed for additional 3-year periods. In addition, a member may serve beyond the expiration of the member's 3-year period of service for so long a period of time as is necessary to complete action on construction permit applications pending at the expiration of the member's 3-year period of service.

(b) One member shall be appointed by the governing body of the municipality in which the treatment, storage, or disposal facility is primarily proposed to be located to serve on the board that is established to consider a particular construction permit application. One member shall be appointed by the county board of commissioners in which the treatment, storage, or disposal facility is proposed to be located and shall be a resident of the county where the facility is proposed to be located. The members serving pursuant to this subdivision shall serve until the particular construction permit application subject to their review is approved or until the application is rejected and is no longer subject to review.

(c) An attorney shall be appointed by the governor, with the advice and consent of the senate, to serve as a nonvoting chairperson on each board established to review a site construction permit. The chairperson shall have experience in conducting formal meetings where sworn testimony is received. Subject to the other requirements of this subdivision, the governor may appoint more than 1 chairperson. However, only 1 chairperson, designated by the department, shall serve on a particular board.

(3) The department shall notify the local governing body of the municipality and county government of a construction permit application filed with the department.

(4) Five of the 9 voting members of the board constitute a quorum for the transaction of business of the board and the concurrence of 5 voting members of the board constitutes a legal action of the board. All meetings of the board shall be conducted pursuant to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(5) The department shall make staff available to assist a board in carrying out its responsibilities.

(6) A site review board that is established before December 28, 1987 shall proceed and fulfill its duties pursuant to the applicable law in effect when the site review board was established.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**324.11118 Construction permit required; application form; activities subject to construction permit requirements; contents of application; fee; disclosure statement; providing additional information; denial of application; placement on organized mailing list; charge; revolving fund; records; expenses; newspaper notice; calculation of construction permit application fee.**

Sec. 11118. (1) Except as otherwise provided in section 11122, a person shall not establish a treatment, storage, or disposal facility without a construction permit from the department. A person proposing the establishment of a treatment, storage, or disposal facility subject to the construction permit requirement of this part, but not including a limited storage facility, shall make application for a construction permit to the department on a form provided by the department.

(2) If an amendment to this part or to the rules promulgated under this part subjects activities lawfully being conducted at a treatment, storage, or disposal facility at the time the amendment takes effect to the operating license requirements of this part solely because of the amendment, the activities carried out at the facility prior to the effective date of the amendment are not subject to the construction permit requirements of this part, except for an expansion of the facility with respect to such activities beyond its original authorized design capacity or beyond the area specified in an original permit, license, or other authorization or an alteration of the method of hazardous waste treatment or disposal.

(3) The application for a construction permit shall contain the name and residence of the applicant, the location of the proposed treatment, storage, or disposal facility, and other information specified in this section, by rule, or by federal regulation issued under the solid waste disposal act. The application shall be accompanied by a construction permit application fee. The fee shall be calculated as provided in subsection (10) or may be based on the actual cost of the construction permit review according to procedures established by rule. Construction permit application fees shall be deposited in the general fund of the state. The application shall include a copy of the actual published notice as described in subsection (9) and a

determination of existing hydrogeological characteristics specified in a hydrogeological report and monitoring program consistent with rules promulgated pursuant to this part, an environmental assessment, an engineering plan, and the procedures for closure and postclosure monitoring. The environmental assessment shall include, at a minimum, an evaluation of the proposed facility's impact on the air, water, and other natural resources of the state, and also shall contain an environmental failure mode assessment.

(4) Except as otherwise provided in this subsection, the construction permit application shall include a disclosure statement that includes all of the following:

(a) The full name and business address of all of the following:

(i) The applicant.

(ii) The 5 persons holding the largest shares of the equity in or debt liability of the proposed facility. The department may waive all or any portion of this requirement for an applicant that is a corporation with publicly traded stock.

(iii) The operator, if known.

(iv) If known, the 3 employees of the operator who will have the most responsibility for the day-to-day operation of the facility.

(v) Any other business entity included within the definition of person that any person required to be listed in subparagraphs (i) to (iv) has at any time had 25% or more of the equity in or debt liability of. The department may waive all or any portion of this requirement for an applicant that is a corporation with publicly traded stock.

(b) All convictions for criminal violations of any environmental statute enacted by a federal, state, Canadian, or Canadian provincial agency for each person required to be listed under this subsection. If debt liability is held by a chartered lending institution, information required in this subsection and subsection (4)(c) and (d) is not required from that institution.

(c) A listing of all environmental permits or licenses issued by a federal, state, Canadian, or Canadian provincial agency held by each person required to be listed under this subsection that were permanently revoked because of noncompliance.

(d) A listing of all activities at property owned or operated by each person required to be listed under this subsection that resulted in a threat or potential threat to the environment and for which public funds were used to finance an activity to mitigate the threat or potential threat to the environment, except if the public funds expended to facilitate the mitigation of environmental contamination were voluntarily and expeditiously recovered from the applicant or other listed person without litigation.

(5) If any information required to be included in the disclosure statement changes or is supplemented after the filing of the statement, the applicant, permittee, or licensee shall provide that information to the department in writing within 30 days of the change or addition.

(6) Notwithstanding any other provision of law, the department may deny an application for a construction permit if there are any listings pursuant to subsection (4)(b), (c), or (d) as originally disclosed or as supplemented.

(7) A person may indicate an interest in being placed on a department organized mailing list to be kept informed of any rules, plans, construction permit applications, contested case hearings, public hearings, or other information or procedures relating to the administration of this part. A charge may be required by the department to cover the cost of the materials.

(8) There is created within the state treasury a revolving fund. When a site construction permit application is referred to a site review board by the department, the applicant shall pay a \$25,000.00 fee to be placed in this fund. The \$25,000.00 fee shall be in addition to the application fee required under subsection (3). This fund shall cover the expenses of the site review board members, the chairperson, a mediator, and any other expenses necessary to the deliberations of the board. The department shall administer the fund and authorize expenditures. The department shall maintain records to support any expenses charged to the fund. If expenses payable from the fund exceed the \$25,000.00 fee paid by the applicant, the additional expenses shall be paid from money appropriated by the legislature to the revolving fund created in this subsection. Any unexpended portion of an applicant's \$25,000.00 fee that is not expended to pay the expenses listed in this subsection shall be reimbursed to the applicant after the site review board process is concluded.

(9) An application for a site construction permit shall not be complete unless it includes a copy of a newspaper notice which the applicant published at least 30 days prior to submittal of the application in a newspaper having major circulation in the municipality and the immediate vicinity of the proposed treatment, storage, or disposal facility. The required published notice shall contain a map indicating the location of the proposed treatment, storage, or disposal facility and information on the nature and size of the proposed facility. In addition, the notice shall contain all of the following information provided by the department:

(a) A description of the application review process.

(b) The location where the complete application package may be reviewed.

(c) An explanation of how copies of the complete application package may be obtained.

(10) An applicant for a construction permit for a treatment, storage, or disposal facility shall calculate the applicable construction permit application fee required under subsection (3) by totaling the following for each construction permit application:

(a) For a landfill, surface impoundment, land treatment, or waste pile facility..... \$ 9,000.00

(b) For an incinerator or treatment facility other than a treatment facility in subdivision (a)..... \$ 7,200.00

(c) For a storage facility, other than storage that is associated with treatment or disposal activities that may be regulated under a single permit..... \$ 500.00

(d) For the permitted site size of a landfill, surface impoundment, land treatment, or waste pile facility, except waste piles meeting the requirements of 40 C.F.R. 264.250(c), the following:

(i) Less than 5 acres..... \$ 100.00

(ii) 5 to 19 acres..... \$ 170.00

(iii) 20 to 79 acres..... \$ 240.00

(iv) 80 acres or more..... \$ 320.00

(e) For the permitted site size of a treatment or storage facility, other than a facility listed in subdivision (d), the following:

(i) Less than 5 acres..... \$ 50.00

(ii) 5 to 19 acres..... \$ 100.00

(iii) 20 to 79 acres..... \$ 100.00

(iv) 80 acres or more..... \$ 100.00

(f) For the projected waste volume per day for a landfill, surface impoundment, land treatment, or waste pile facility, except waste piles meeting the requirements of 40 C.F.R. 264.250(c), the following:

(i) Less than 50 cubic yards or 10,000 gallons..... \$ 60.00

(ii) 50 to 100 cubic yards or 10,000 to 20,000 gallons..... \$ 80.00

(iii) 101 to 700 cubic yards or 20,001 to 140,000 gallons..... \$ 100.00

(iv) More than 700 cubic yards or more than 140,000 gallons..... \$ 130.00

(g) For the projected waste volume per day for a treatment or storage facility, other than a facility listed in subdivision (f), the following:

(i) Less than 50 cubic yards or 10,000 gallons..... \$ 50.00

(ii) 50 to 100 cubic yards or 10,000 to 20,000 gallons..... \$ 100.00

(iii) 101 to 700 cubic yards or 20,001 to 140,000 gallons..... \$ 100.00

(iv) More than 700 cubic yards or more than 140,000 gallons..... \$ 150.00

(h) For the hydrogeological characteristics of a landfill, surface impoundment, land treatment, or waste pile facility, except waste piles meeting the requirements of 40 C.F.R. 264.250(c), the following:

(i) Natural clay..... \$ 40.00

(ii) Natural sand..... \$ 60.00

(iii) Compacted clay..... \$ 70.00

(iv) Artificially lined (other materials)..... \$ 100.00

(v) Any combination of the above..... \$ 100.00

(i) For the hydrogeological characteristics of surface water in a treatment or storage facility, other than a facility listed in subdivision (h)..... \$ 75.00

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**Administrative rules:** R 299.9101 et seq. of the Michigan Administrative Code.

**324.11118a Multisource commercial hazardous waste disposal well; definition; maintenance of treatment and storage facility; construction permit and operating license required.**

Sec. 11118a. (1) As used in this section, "multisource commercial hazardous waste disposal well" has the meaning ascribed to that term in section 62506a.

(2) A multisource commercial hazardous waste disposal well shall maintain on site a treatment facility and a storage facility that have obtained a construction permit under section 11118 and an operating license under section 11123.

**History:** Add. 1996, Act 182, Imd. Eff. May 3, 1996.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**324.11119 Duties of department upon receipt of construction permit application; referral of application to site review board; notice of intent to deny application; providing board with documents; submission of application to board; public participation process; review of comments; referral or denial of application; procedure.**

Sec. 11119. (1) Upon receipt of a construction permit application that complies with the requirements of section 11118, the department shall:

(a) Immediately notify the permanent board members and the municipality and county in which the treatment, storage, or disposal facility is located or proposed to be located; a local soil erosion and sedimentation control agency appointed pursuant to part 91; each division within the department that has responsibility in land, air, or water management; a regional planning agency established by executive directive of the governor; and other appropriate agencies. The notice shall describe the procedure by which the permit may be approved or denied.

(b) Review the plans of the proposed treatment, storage, or disposal facility to determine if the proposed operation complies with this part and the rules promulgated under this part. The review shall be made within the department. The review shall include, but need not be limited to, a review of air quality, water quality, waste management, hydrogeology, and the applicant's disclosure statement. A written and signed review by each person within the department reviewing the permit and plans shall be received and recorded before a construction permit is referred to the site review board or is denied by the department. If the site review, plan review, and the application meet the requirements of this part and the rules promulgated under this part, the department shall refer the application to the site review board for review. An expansion of a treatment, storage, or disposal facility beyond the original authorized design capacity or beyond the area specified in the original permit, license, or other authorization or an alteration of the method of hazardous waste treatment or disposal constitutes a new proposal for which a new construction permit is required.

(c) Coordinate and review all permits that the applicant is required to obtain from the department in order to construct the proposed treatment, storage, or disposal facility.

(d) Hold a public hearing within 60 days after receipt of a complete construction permit application.

(2) The department shall refer an application to the site review board or shall notify the applicant of the intent to deny the construction permit application within 120 days after the department receives an application meeting the requirements of section 11118.

(3) If the department refers an application to the site review board, prior to the first board meeting the department shall provide each board member with a copy of the application, a staff report including a summary of public comments, a responsiveness summary, and a draft construction permit.

(4) If the department does not refer an application to the site review board or does not notify the applicant of the intent to deny the construction permit application within 120 days, the construction permit application shall be submitted to the board for action.

(5) If the department intends to deny the application, the department shall commence a public participation process that is equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act. Upon completion of the public participation process, the department shall review all the comments made during that process and shall refer the application to the site review board or deny the application. If the department refers the construction permit application to the board, the department shall proceed as described in section 11120.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act



**324.11120 Notification of member, county, and municipality; selection of members to serve on board; creation of board; timetable; duties of board; comment and input; listing issues; negotiation process; identification of affected parties; appointment of mediator; final best offer or negotiated settlement; hearings; impact; considerations; concerns and objections; modifications; integration of local ordinances, permits, or requirements; seeking advice; decision; approval or rejection of application; extension; preparation of draft construction permit; initiation of public participation process; duties of department; direction of board; duties of board upon rejection of application.**

Sec. 11120. (1) The department shall notify those members appointed by the governor who will serve on the board within 75 days after receipt of a construction permit application, if the department has not notified the applicant of the intent to deny the application, or at the time the department refers an application to the board, or at the time an application is automatically referred to the board pursuant to section 11119(4), whichever is earlier. At that time the department also shall notify the county and the municipality in which the proposed treatment, storage, or disposal facility is to be located and request the appointment of the members of the board as provided in section 11117(2)(b). The notification shall include a notice of intent to issue all departmental permits required for the construction, pending recommendations of the board and approval by the department. Within 45 days after the notification, the county and the municipality shall select the members to serve on the board. The board shall be created at that time and notification of the creation of the board shall be made to the chairperson.

(2) Within 30 days after creation of a board, the board shall meet to review and establish a timetable for the consideration of an application for a proposed treatment, storage, or disposal facility.

(3) The board shall do all of the following:

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site, at its first meeting. The public notice shall do both of the following:

(i) Contain a map indicating the location of the proposed treatment, storage, or disposal facility, a description of the proposed action, and the location where the application for a construction permit may be reviewed and where copies may be obtained.

(ii) Identify the time, place, and location for the public hearing held to receive public comment and input on the application for a construction permit.

(b) Hold a public hearing within 45 days of the first board meeting.

(c) Publish the notice not less than 30 days before the date of the public hearing.

(4) Comment and input on the proposed treatment, storage, or disposal facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the board for 15 days after the public hearing date.

(5) After the public hearing comment period has been closed, the board shall list the issues that are to be addressed through a negotiation process and list the issues to be evaluated by the board through its deliberations.

(6) A negotiation process shall take place between the applicant and the affected parties, who shall be identified by the board. A representative of the municipality and a representative of the county in which the facility is proposed to be located shall each be considered an affected party. If requested by any affected party or the applicant, the board shall appoint a mediator to assist during negotiations. The negotiation process shall:

(a) Proceed concurrently with the board's hearings process.

(b) Address the list of issues referred by the board and any other issues unanimously agreed to be considered by the applicant and all affected parties.

(c) Be completed within 150 days after the first meeting of the board unless the applicant and 1 or more affected parties involved in the negotiation process jointly request an extension of not more than 60 days and the extension is approved by the board. The board shall not grant extensions in excess of 60 days. An extension granted under this subdivision may extend the time period in which the board either approves or rejects the construction permit application as specified in subsection (15).

(7) On each negotiation issue which has not reached a negotiated settlement, the board shall select between final best offers presented by affected parties. The final best offer or the negotiated settlement shall not be less stringent than the requirements of the law or pertinent decisions of the board, whichever is the most stringent.

(8) The board shall conduct formal or informal hearings to receive evidence on the disputed issues not subject to the negotiation process described in subsections (6) and (7).

(9) The formal hearings process shall be conducted by the board to receive information from technical experts on disputed issues. Any affected party may request permission by the board to participate in the board's formal hearings within 15 days after the board's public hearing. The board shall determine which affected parties shall participate in the board's formal hearing. If the board denies the request of an affected party to participate in the board's formal hearing, the board shall give the affected party notice of the board's decision and the reasons for the decision. A representative of the municipality and a representative of the county in which the facility is proposed to be located shall each be automatically entitled to participate. During the board's formal hearings process, the board shall:

- (a) Receive sworn testimony.
- (b) Cross-examine witnesses.
- (c) Allow representatives of affected parties to cross-examine witnesses.
- (d) Request participation as needed.

(10) Comments made at informal hearings shall not be made under oath and no cross-examination shall occur.

(11) The board shall deliberate on the impact of the proposed treatment, storage, or disposal facility on the municipality in which it is to be located and make a final determination as to its recommendation to the department regarding the construction permit application.

(12) The board shall consider, at a minimum, all of the following:

- (a) The risk and impact of accident during the transportation of hazardous waste.
- (b) The risk and impact of contamination of ground and surface water by leaching and runoff from the proposed treatment, storage, or disposal facility.
- (c) The risk of fires or explosions from improper treatment, storage, and disposal methods.
- (d) The impact on the municipality where the proposed treatment, storage, or disposal facility is to be located in terms of health, safety, cost, and consistency with local planning and existing development. The board also shall consider local ordinances, permits, or other requirements and their potential relationship to the proposed treatment, storage, or disposal facility.
- (e) The nature of the probable environmental impact, including the specification of the predictable adverse effects on the following:
  - (i) The natural environment and ecology.
  - (ii) Public health and safety.
  - (iii) Scenic, historic, cultural, and recreational value.
  - (iv) Water and air quality and wildlife.
- (f) An evaluation of measures to mitigate adverse effects.
- (g) The board shall consider the information contained in the construction permit application disclosure statement.

(13) The board also shall consider the concerns and objections submitted by the public. The board shall facilitate efforts to provide that the concerns and objections are mitigated by establishing additional stipulations specifically applicable to the treatment, storage, or disposal facility and operation at that site. Through deliberations, the board may modify the construction permit application in response to its findings. To the fullest extent practicable, the board also shall integrate by stipulation the provisions of the local ordinances, permits, or requirements.

(14) The board may seek the advice of any person in order to render a decision to issue its recommendation to the department to approve or deny the construction permit application.

(15) Within 180 days after the first meeting of the board, the board shall make a decision on the negotiated agreement and the final best offer from each party on each issue and shall recommend to the department that the department either approve or reject the construction permit application. The 180-day time period may be extended as provided in subdivision (6)(c). However, an extension shall not exceed 60 days.

(16) If the board recommends to the department the approval of the construction permit application and the department follows the recommendation, the department shall prepare a draft construction permit and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act. Upon completion of the public participation process, the department shall review all comments made during that process and shall issue or revise and issue the construction permit or reconvene the board to consider issues specified by the department that were raised during the public participation process. Within 30 days after having been reconvened under this subsection, the board shall recommend to the department the rejection of the application or recommend the revision and issuance of the construction permit, or recommend that the department revise the draft construction permit and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act.

(17) If the board recommends the rejection of the construction permit application, the board shall do all of the following:

(a) State its reasons in writing and indicate the necessary changes to make the application acceptable if a new application is made.

(b) Recommend that the department deny the construction permit and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act, or regulations promulgated under that act.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

#### **324.11121 Effect of local ordinance, permit requirement, or other requirement.**

Sec. 11121. A local ordinance, permit requirement, or other requirement does not prohibit the construction of a treatment, storage, or disposal facility, except as otherwise provided in section 11122.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

#### **324.11122 Limited storage facility; license; form and contents of application; fee; compatibility with local zoning ordinances; impact on municipality; certification; approval or denial of operating license.**

Sec. 11122. (1) A person may establish a limited storage facility without a construction permit from the department. However, a person shall not establish a limited storage facility or conduct, manage, maintain, or operate a limited storage facility within this state without an operating license from the department issued under this section, notwithstanding section 11123. A limited storage facility is subject to the rules pertaining to storage facilities.

(2) An applicant for a limited storage facility operating license shall apply for that license on a form provided by the department that shall include the name and residence of the applicant, the location of the proposed or existing facility, other information specified by rule or by federal regulation issued under the solid waste disposal act, and proof of financial responsibility. The application shall include a determination of existing hydrogeological characteristics specified in a hydrogeological report and monitoring program consistent with rules promulgated by the department, an environmental assessment, an engineering plan, procedures for closure, and a resolution or other formal determination of the governing body of the municipality in which the proposed limited storage facility would be located indicating that the limited storage facility is compatible with local zoning ordinances. However, in the absence of a resolution or other formal determination, the application shall include a copy of a registered letter sent to the municipality dated 60 days prior to the application submittal indicating the intent to construct a limited storage facility, requesting a formal determination on whether the proposed facility is compatible with local zoning ordinances in effect on the date the letter is received and indicating that failure to pass a resolution or make a formal determination within 60 days of receipt of the letter means that the proposed facility is to be considered compatible with applicable zoning ordinances. The environmental assessment shall include, at a minimum, an evaluation of the proposed facility's impact on the air, water, and other natural resources of the state and also shall contain an environmental failure mode assessment. The application shall be accompanied by a fee of \$500.00, which shall be deposited in the general fund of the state.

(3) If a municipality does not make a formal determination concerning whether a proposed limited storage facility is compatible with local zoning ordinances within 60 days of receiving a registered letter as described in subsection (2), it shall mean that the limited storage facility is to be considered compatible with local zoning ordinances and incompatibility with local zoning shall not be a basis for denial of the license by the department. In determining whether the proposed limited storage facility is compatible with local zoning ordinances, the municipality shall assess the proposed facility's compatibility with ordinances in effect at the date of receipt of the registered letter.

(4) Prior to issuing an operating license for a limited storage facility, the department shall deliberate on the impact that the proposed limited storage facility would have on the municipality in which it is to be located and shall consider, at a minimum, all of the following:

(a) The risk and impact of accident during the transportation of hazardous waste.

(b) The risk and impact of contamination of ground and surface water by leaching and runoff from the proposed limited storage facility.

(c) The risk of fires or explosions from improper storage methods.

(d) The impact on the municipality where the proposed limited storage facility is to be located in terms of the health, safety, cost, and consistency with local planning and existing development. The department also shall consider local ordinances, permits, or other requirements and their potential relationship to the proposed limited storage facility.

(e) The nature of the probable environmental impact, including the specific predictable adverse effects on the following:

(i) The natural environment and ecology.

(ii) Public health and safety.

(iii) Scenic, historic, cultural, and recreational value.

(iv) Water and air quality and wildlife.

(f) An evaluation of measures to mitigate adverse effects.

(5) The department shall consider the concerns and objections submitted by the public. The department shall facilitate efforts to provide that the concerns and objections are mitigated by establishing additional stipulations specifically applicable to the limited storage facility and operation at that site. The department shall not issue an operating license under this section unless the proposed limited storage facility is compatible with the zoning ordinances of the municipality in which the limited storage facility would be located.

(6) The applicant also shall submit to the department a certification under the seal of a licensed professional engineer verifying that the construction of the limited storage facility has proceeded according to the plans approved by the department. The department shall require additional certification periodically during the operation or in order to verify proper closure of the site.

(7) The department shall either approve or deny the application for an operating license. If the department denies the operating license, the department shall state the reasons for the denial in writing.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**324.11123 Operating license required; contents of application; demonstration of financial responsibility; amount and disposition of fee; certifications; schedule for submitting operating license application; time period for submitting complete operating license application; conditions for operating storage facility until application approved or denied.**

Sec. 11123. (1) Unless a person is complying with subsection (5) or a rule promulgated under section 11127(4), a person shall not conduct, manage, maintain, or operate a treatment, storage, or disposal facility within this state without an operating license from the department.

(2) The application for an operating license shall contain the name and residence of the applicant, the location of the proposed or existing treatment, storage, or disposal facility, and other information considered necessary by the department including proof of financial responsibility. In addition, the application for the initial operating license after issuance of a construction permit shall contain all of the disclosure information called for in section 11118(4) that was not provided as part of the construction permit application and any changes in or additions to the previously submitted disclosure information. In addition, the owner and operator shall certify that the disclosure listings previously submitted continue to be correct. An applicant for an operating license for a treatment, storage, or disposal facility that is a surface impoundment, landfill, or land treatment facility shall demonstrate financial responsibility for claims arising from nonsudden and accidental occurrences relating to the operation of the facility that cause injury to persons or property. The application shall be accompanied by a fee of \$500.00. The license fees shall be deposited in the general fund of the state.

(3) The applicant also shall submit to the department a certification under the seal of a registered professional engineer verifying that the construction of the treatment, storage, or disposal facility has proceeded according to the plans approved by the department and, if applicable, the approved construction permit. The department shall require additional certification periodically during the operation or in order to verify proper closure of the site. The department shall require from those treatment, storage, or disposal facilities that are permitted to operate pursuant to section 11116, certification of the treatment, storage, or disposal facilities' capability of treating, storing, or disposing of hazardous waste in compliance with this part.

(4) The department shall establish a schedule for requiring each person subject to subsection (5) to submit an operating license application. The department may adjust this schedule as necessary. Each person subject to subsection (5) shall submit a complete operating license application within 180 days of the date requested to do so by the department.

(5) A person who owns or operates a treatment, storage, or disposal facility that is in existence on the effective date of an amendment of this part or of a rule promulgated under this part that renders all or portions of the facility subject to the operating license requirements of this section may continue to operate the facility or portions of the facility that are subject to the operating license until an operating license application is approved or denied if all of the following conditions have been met:

(a) A complete operating license application is submitted within 180 days of the date requested by the department under subsection (4).

(b) The person is in compliance with all rules promulgated under this part and with all other state laws.

(c) The person qualifies for interim status as defined in the solid waste disposal act, is in compliance with interim status standards established by federal regulation under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b, and has not had interim status terminated.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**Administrative rules:** R 299.9101 et seq. of the Michigan Administrative Code.

#### **324.11124 Inspection of site; determination of compliance; filing and review of inspection report.**

Sec. 11124. Upon receipt of an operating license application meeting the requirements of section 11123, the department shall inspect the site and determine if the proposed treatment, storage, or disposal facility complies with this part, the rules promulgated under this part, and the stipulations included in the approved treatment, storage, or disposal facility construction permit. An inspection report shall be filed in writing by the department before issuing an operating license and shall be made available for public review.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

#### **324.11125 Final decision on operating license application; public hearing; notice; time; extension of deadline; stipulations; operation not prohibited by local ordinance, permit, or other requirement; changes or additions to disclosure statement; listings not identified or disclosed as grounds for denial of application.**

Sec. 11125. (1) The department shall provide notice and an opportunity for a public hearing before making a final decision on an operating license application. The department shall make a final decision on an operating license application within 140 days after the department receives a complete application. However, if the state's hazardous waste management program is authorized by the United States environmental protection agency under sections 3006 to 3009 of subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6926 to 6929, the department may extend the deadline beyond the limitation provided in this section in order to fulfill the public participation requirements of the solid waste disposal act. The operating license may contain stipulations specifically applicable to site and operation. A local ordinance, permit, or other requirement shall not prohibit the operation of a licensed treatment, storage, or disposal facility.

(2) If any information required to be included in the disclosure statement required under section 11118 changes or is supplemented after the filing of the statement, the applicant, permittee, or licensee shall provide that information to the department in writing within 30 days of the change or addition.

(3) The department may deny an operating license application submitted pursuant to section 11123 if there are any listings pursuant to section 11118(4)(b) to (d) that were not identified during the site review board process or were not disclosed as required in section 11123(2) or this section.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act



**Popular name:** NREPA

### **324.11126 Coordinating and integrating provisions of act; extent.**

Sec. 11126. The department shall coordinate and integrate the provisions of this part for purposes of administration and enforcement with appropriate state and federal law including the clean air act, chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q; the federal water pollution control act, chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263, 1265 to 1270, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1326, 1328 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387; title XIV of the public health service act, chapter 373, 88 Stat. 1660; the toxic substances control act, Public Law 94-469, 15 U.S.C. 2601 to 2629, 2641 to 2656, 2661 to 2671, and 2681 to 2692; the resource conservation and recovery act of 1976, 42 U.S.C. 6901 to 6987; parts 31, 55, 115, and 121; the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023; the fire prevention code, 1941 PA 207, MCL 29.1 to 29.34; and the hazardous materials transportation act. The coordination and integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11126a Fee schedule; report.**

Sec. 11126a. By September 1, 1998, the department shall submit a report to the legislature that recommends a fee schedule to implement this part.

**History:** Add. 1998, Act 139, Eff. Sept. 1, 1998.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11127 Rules generally; exemption; effect of amendment to part or rules, or changes in definitions.**

Sec. 11127. (1) The department shall submit to the legislature, after consultation with the department of public health, rules necessary to implement and administer this part. The rules required to be submitted by this subsection shall include, but not be limited to, requirements for generators, transporters, and treatment, storage, and disposal facilities.

(2) The department may promulgate rules that exempt certain hazardous wastes and certain treatment, storage, or disposal facilities from all or portions of the requirements of this part as necessary to obtain or maintain authorization from the United States environmental protection agency under the solid waste disposal act, or upon a determination by the department that a hazardous waste or a treatment, storage, or disposal facility is adequately regulated under other state or federal law and that scientific data supports a conclusion that an exemption will not result in an impairment of the department's ability to protect the public health and the environment. However, an exemption granted pursuant to this subsection shall not result in a level of regulation less stringent than that required under the solid waste disposal act.

(3) If an amendment to this part or the rules promulgated under this part subjects a person to a new or different licensing requirement of this part, the department shall promulgate rules to facilitate orderly and reasonable compliance by that person.

(4) Changes in the definition of hazardous waste contained in section 11103 and the definition of treatment contained in section 11104 effected by the 1982 amendatory act that amended former Act No. 64 of the Public Acts of 1979 do not eliminate any exemption provided to any hazardous waste or to any treatment, storage, or disposal facility under administrative rules promulgated under former Act No. 64 of the Public Acts of 1979 before March 30, 1983. However, these exemptions may be modified or eliminated by administrative rules promulgated after March 30, 1983 under former Act No. 64 of the Public Acts of 1979 or under this part in order that the state may obtain authorization from the United States environmental protection agency under the solid waste disposal act, or to provide adequate protection to the public health or the environment.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**Administrative rules:** R 299.9101 et seq. of the Michigan Administrative Code.

### **324.11128 Rules listing hazardous waste and other criteria; revision; removing certain materials from list; public hearings; construction of part, rules, and list.**

Sec. 11128. (1) The department shall submit to the legislature proposed rules listing hazardous waste and other criteria as required by this part. The rules shall state the criteria for identifying the characteristics of hazardous waste and for listing the types of hazardous waste, taking into account toxicity, persistence, degradability in nature, potential for accumulation in tissue, and other related factors including flammability, corrosiveness, and other hazardous characteristics. The department shall revise by rule the criteria and listing as necessary. A rule promulgated for the purpose of removing from the list those materials removed from the federal list of regulated materials or removing from management as a hazardous waste those wastes that have been exempted from management under the solid waste disposal act are not required to meet the requirements of sections 41, 42, and 45(2) of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.241, 24.242, and 24.245 of the Michigan Compiled Laws.

(2) Before the department establishes the list, the department shall hold not less than 3 public hearings in different municipalities in the state. To ensure consistency between federal and state requirements, this part, the rules promulgated by the department, and the list shall be construed to conform as closely as possible to requirements established under the solid waste disposal act.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**Administrative rules:** R 299.9101 et seq. of the Michigan Administrative Code.

### **324.11129 Information as public record; confidential information; notice of request for information; demonstration by person regulated; granting or denying request; certain data not confidential; release of confidential information.**

Sec. 11129. (1) Except as provided in subsections (2) and (3), information obtained by the department under this part is a public record as provided in the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) A person regulated under this part may designate a record, permit application, other information, or a portion of a record, permit application, or other information furnished to or obtained by the department or its agents as being only for the confidential use of the department and the board. The department shall notify the regulated person of a request for public records under section 5 of Act No. 442 of the Public Acts of 1976, being section 15.235 of the Michigan Compiled Laws, whose scope includes information designated as confidential. The person regulated under this part has 30 days after the receipt of the notice to demonstrate to the department that the information designated as confidential should not be disclosed because the information is a trade secret or secret process or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the person from whom the information was obtained and make available information not otherwise publicly available. The department shall grant the request for the information unless the person regulated under this part makes a satisfactory demonstration to the department that the information should not be disclosed. If there is a dispute between the owner or operator of a treatment, storage, or disposal facility and the person requesting information under Act No. 442 of the Public Acts of 1976, the commission shall make the decision to grant or deny the request. When the department makes a decision to grant a request, the information requested shall not be released until 3 days have elapsed after the decision is made.

(3) Data on the quantity or composition of hazardous waste generated, transported, treated, stored, or disposed of; air and water emission factors, rates and characterizations; emissions during malfunctions of equipment required under this part on treatment, storage, or disposal facilities; or the efficiency of air and water pollution control devices is not rendered as confidential information by this section.

(4) The department may release any information obtained under this part, including a record, permit application, or other information considered confidential pursuant to subsection (2), to the United States environmental protection agency, the United States agency for toxic substance disease registry, or other agency authorized to receive information, including confidential information, under the solid waste disposal act.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11130 Environmental pollution prevention fund; creation; receipt and disposition of assets; hazardous waste and liquid industrial waste users account.**

Sec. 11130. (1) The environmental pollution prevention fund is created in the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the environmental pollution prevention fund or into an account within the environmental pollution prevention fund. The state treasurer shall direct the investment of the environmental pollution prevention fund. The state treasurer shall credit to each account within the environmental pollution prevention fund interest and earnings from account investments.

(3) Money remaining in the environmental pollution prevention fund and in any account within the environmental pollution prevention fund at the close of the fiscal year shall not lapse to the general fund.

(4) The hazardous waste transporter account is created within the environmental pollution prevention fund. The department shall expend money from the hazardous waste transporter account, upon appropriation, for the implementation of this part. In addition, funds not expended for the implementation of this part may be utilized for emergency response and cleanup activities related to hazardous waste that are initiated by the department.

(5) The hazardous waste and liquid industrial waste users account is created within the environmental pollution prevention fund. The department shall expend money from the hazardous waste and liquid industrial waste users account, upon appropriation, to implement the state's hazardous waste management program in accordance with this part and the rules promulgated under this part. The target revenue projection for the hazardous waste and liquid industrial waste users account is \$1,600,000.00.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**Administrative rules:** R 299.9101 et seq. of the Michigan Administrative Code.

### **324.11132 Repealed. 1998, Act 139, Eff. Sept. 1, 1998.**

**Compiler's note:** The repealed section pertained to requirements for hazardous waste transporter business license.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11132a Transporter; duties; inspection; establishment of standards and requirements by rule.**

Sec. 11132a. (1) A transporter shall do all of the following:

(a) Obtain and utilize an environmental protection agency identification number in accordance with the rules promulgated under this part.

(b) If transporting by highway, register and be permitted in accordance with the hazardous materials transportation act and carry a copy of the registration and permit on the vehicle for inspection by the department, the department of state police, a peace officer, or a representative of the United States environmental protection agency.

(c) Comply with the transfer facility operating and financial responsibility requirements as required by the rules promulgated under this part.

(d) Comply with the consolidation and commingling requirements as required by the rules promulgated under this part.

(e) Comply with the vehicle requirements as required by the rules promulgated under this part.

(f) Utilize, complete, and retain a manifest for each shipment of hazardous waste as required by this part and the rules promulgated under this part.

(g) Keep all records readily available for review and inspection by the department, the department of state police, a peace officer, or a representative of the United States environmental protection agency.

(h) Retain all records as required by the rules promulgated under this part for a period of 3 years. The retention period required by this subdivision is automatically extended during the course of any unresolved

enforcement action regarding the regulated activity or as required by the department.

(i) Comply with the reporting requirements as required by the rules promulgated under this part.

(j) Comply with the import and export requirements as required by the rules promulgated under this part.

(k) Comply with the requirements regarding hazardous waste discharges as required by the rules promulgated under this part.

(l) Comply with the land disposal restriction requirements as required by the rules promulgated under this part.

(m) Comply with the universal waste requirements as required by the rules promulgated under this part.

(n) Keep the outside of all vehicles and accessory equipment free of hazardous waste or hazardous waste constituents.

(2) The department may conduct an inspection to verify that the equipment, location, and methods of a transporter are adequate to effectuate service under this part and the rules promulgated under this part. The department shall establish, by rule, the inspection standards and requirements.

**History:** Add. 1998, Act 139, Eff. Sept. 1, 1998.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**Administrative rules:** R 299.9101 et seq. of the Michigan Administrative Code.

### **324.11133 Hazardous waste transporter business license; revocation.**

Sec. 11133. A hazardous waste transporter business license issued under this part shall be revoked if the holder of the license selected a treatment, storage, or disposal facility which is operated contrary to this part or the rules promulgated under this part or uses a vehicle to store, treat, transport, or dispose of hazardous waste contrary to this part or the rules promulgated under this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11134 Municipality or county; prohibited conduct.**

Sec. 11134. A municipality or county shall not prohibit the transportation of hazardous waste through the municipality or county or prevent the ingress and egress into a licensed treatment, storage, or disposal facility.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11135 Manifest; user charge; payment; violations; contents; copy; certification; specified destination; determining status of specified waste; exception report; retention period for copy of manifest; extension.**

Sec. 11135. (1) A hazardous waste generator shall provide a separate manifest to the transporter for each load of hazardous waste transported to property that is not on the site where it was generated. Until October 1, 2011, a person required to prepare a manifest shall submit to the department a manifest processing user charge of \$6.00 per manifest and his or her tax identification number. Each calendar year, the department may adjust the manifest processing user charge as necessary to ensure that the total cumulative amount of the user charges assessed pursuant to this section and sections 11153, 12103, 12109, and 12112 are consistent with the target revenue projection for the hazardous waste and liquid industrial waste users account as provided for in section 11130(5). However, the manifest processing user charge shall not exceed \$8.00 per manifest. Money collected under this subsection shall be forwarded to the state treasurer for deposit into the environmental pollution prevention fund created in section 11130 and credited to the hazardous waste and liquid industrial waste users account created in section 11130(5).

(2) Payment of the manifest processing user charges under subsection (1) shall be made using a form provided by the department. The department shall send a form to each person subject to the manifest processing user charge by March 30 of each year. The form for the 2009 billing cycle shall specify the number of manifests prepared by that person and processed by the department during the months of October, November, and December 2007 and calendar year 2008. The form for subsequent billing cycles shall specify the number of manifests prepared by that person and processed by the department during the previous

calendar year. A person subject to the manifest processing user charge shall return the completed form and the appropriate payment to the department by April 30 of each year.

(3) A person who fails to provide timely and accurate information, a complete form, or the appropriate manifest processing user charge as provided for in this section is in violation of this part and is subject to both of the following:

(a) Payment of the manifest processing user charge and an administrative fine of 5% of the amount owed for each month that the payment is delinquent. Any payments received after the 15th of the month after the due date shall be considered delinquent for that month. However, the administrative fine shall not exceed 25% of the total amount owed.

(b) Beginning 5 months after the date payment of the manifest user charge is due, but not paid, at the request of the department, an action by the attorney general for the collection of the amount owed under subdivision (a) and the actual cost to the department in attempting to collect the amount owed under subdivision (a).

(4) Any amounts collected under subsection (3) for a violation of this section shall be forwarded to the state treasurer and deposited in the environmental pollution prevention fund created in section 11130 and credited to the hazardous waste and liquid industrial waste users account created in section 11130(5).

(5) The department shall maintain information regarding the manifest processing user charges received under this section as necessary to satisfy the reporting requirements of subsection (6).

(6) The department shall evaluate the effectiveness and adequacy of the manifest processing user charges collected under this section relative to the overall revenue needs of the state's hazardous waste management program administered under this part. Not later than April 1 of each even-numbered year, the department shall summarize its findings under this subsection in a report and shall provide that report to the legislature.

(7) A generator shall include on the manifest details as specified by the department and shall at least include sufficient qualitative and quantitative analysis and physical description to evaluate toxicity and methods of transportation, storage, and disposal. The manifest also shall include safety precautions as necessary for each load of hazardous waste. The generator shall submit to the department a copy of the manifest within a period of 10 days after the end of the month for each load of hazardous waste transported within that month.

(8) The generator shall certify that the information contained on the manifest is factual.

(9) The specified destination of each load of hazardous waste identified on the manifest shall be a designated facility.

(10) If a generator does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days after the date on which the hazardous waste was accepted by the initial transporter, the generator shall contact the transporter to determine the status of the hazardous waste. If the generator is unable to determine the status of the hazardous waste upon contacting the transporter, the generator shall contact the owner or operator of the designated facility to which the hazardous waste was to be transported to determine the status of the hazardous waste.

(11) A generator shall submit an exception report to the department if the generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days after the date on which the hazardous waste was accepted by the initial transporter. The exception report shall include all of the following:

(a) A legible copy of the manifest for which the generator does not have confirmation of delivery.

(b) A cover letter signed by the generator or the generator's authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(12) A generator shall keep a copy of each manifest signed and dated by the initial transporter for 3 years or until the generator receives a signed and dated copy from the owner or operator of the designated facility that received the hazardous waste. The generator shall keep the copy of the manifest signed and dated by the owner or operator of the designated facility for 3 years. The retention periods required by this subsection shall be automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

**History:** 1994, Act 451, Imd. Eff. Mar. 30, 1995;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 403, Imd. Eff. Jan. 6, 2009.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

## **324.11136 Certifying acceptance of waste for transportation; delivery of hazardous waste**



**and manifest; period for keeping copy of manifest; review and inspection of manifest; extension of retention period.**

Sec. 11136. (1) The hazardous waste transporter shall certify acceptance of waste for transportation and shall deliver the hazardous waste and accompanying manifest only to the destination specified by the generator on the manifest.

(2) The hazardous waste transporter shall keep a copy of the manifest for a period of 3 years and shall make it readily available for review and inspection by the department, the director of public health, an authorized representative of the director of public health, a peace officer, or a representative of the United States environmental protection agency. The retention period required by this subsection shall be automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**324.11137 Accepting delivery of hazardous waste; condition; duties of owner or operator.**

Sec. 11137. The treatment, storage, or disposal facility owner or operator shall accept delivery of hazardous waste only if delivery is accompanied by a manifest properly certified by both the generator and the transporter and the treatment, storage, or disposal facility is the destination indicated on the manifest. The treatment, storage, or disposal facility owner or operator also shall do all of the following:

(a) Certify on the manifest receipt of the hazardous waste and return a signed copy of the manifest to the department within a period of 10 days after the end of the month for all hazardous waste received within that month.

(b) Return a signed copy of the manifest to the generator.

(c) Keep permanent records pursuant to the rules promulgated by the department.

(d) Compile a periodic report of hazardous waste treated, stored, or disposed of as required by the department under rules promulgated by the department.

(e) Retain a copy of each manifest and report described in this section for a period of 3 years and make each copy readily available for review and inspection by the department, the director of public health or a designated representative of the director of public health, a peace officer, or a representative of the United States environmental protection agency. The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**Administrative rules:** R 299.9101 et seq. of the Michigan Administrative Code.

**324.11138 Generator of hazardous waste; duties; records; report.**

Sec. 11138. (1) A generator of hazardous waste shall do the following:

(a) Compile and maintain information and records regarding the quantities of hazardous waste generated, characteristics and composition of the hazardous waste, and the disposition of hazardous waste generated.

(b) Utilize proper labeling and containerization of hazardous waste as required by the department.

(c) Provide for the transport of hazardous waste only by a transporter permitted under the hazardous materials transportation act.

(d) Utilize and retain a manifest for each shipment of hazardous waste transported to property that is not on site as required by section 11135 and assure that the treatment, storage, or disposal facility to which the waste is transported is a designated facility.

(e) Provide the information on the manifest as required under section 11135(1) to each person transporting, treating, storing, or disposing of hazardous waste.

(f) Keep all records readily available for review and inspection by the department, the department of state police, a peace officer, or a representative of the United States environmental protection agency.

(g) Retain all records for a period of 3 years. The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

(h) Compile and submit a periodic report of hazardous waste generated, stored, transferred, treated, disposed of, or transported for treatment, storage, or disposal as required by the department.

(2) A generator who also operates a treatment, storage, or disposal facility shall keep records of all hazardous waste produced and treated, stored, or disposed. The generator shall submit a report to the department within a period of 10 days after the end of each month for all waste produced and treated, stored, or disposed.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

#### **324.11139 Condition of obtaining operating license for disposal facility; condition of obtaining operating license for landfill.**

Sec. 11139. (1) As a condition of obtaining an operating license for a disposal facility pursuant to section 11123, the applicant shall demonstrate to the department that the owner of the property has recorded on the deed to the property or some other document that is normally examined during a title search a notice that will notify in perpetuity any potential purchaser of the following:

(a) That the property has been used to manage hazardous wastes.

(b) That the use of the land should not disturb the final cover, liners, components of any containment system, or the function of the monitoring systems on or in the property.

(c) That the survey plat and records of type, location, and quantity of hazardous waste on or in the property have been filed with the local zoning or land use authority as required by the rules promulgated under this part.

(2) As a condition of obtaining an operating license for a landfill pursuant to section 11123, the applicant shall demonstrate to the department that an instrument imposing a restrictive covenant upon the land involved has been executed by all of the owners of the tract of land upon which the landfill is to be located. The instrument imposing the restrictive covenant shall be filed for record by the department in the office of the register of deeds in the county in which the disposal facility is located. The covenant shall state that the land has been or may be used as a landfill for disposal of hazardous waste and that neither the property owners, agents, or employees, nor any of their heirs, successors, lessees, or assignees shall engage in filling, grading, excavating, building, drilling, or mining on the property following completion of the landfill without authorization of the department. In giving authorization, the department shall consider, at a minimum, the original design, type of operation, hazardous waste deposited, and the state of decomposition of the fill. Before authorizing any activity that would disturb the integrity of the final cover of a landfill, the department must find either that the disturbance of the final cover is necessary to the proposed use of the property and will not increase the potential hazard to human health or the environment or that disturbance of the final cover is necessary to reduce a threat to human health or the environment.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

#### **324.11140 Closure and postclosure monitoring and maintenance plan; submission; contents; rules.**

Sec. 11140. (1) The owner or operator of a treatment, storage, or disposal facility shall submit a closure plan to the department as part of the application for a construction permit under section 11118. In addition, the owner or operator of a disposal facility shall submit a postclosure monitoring and maintenance plan to the department as part of the application. At a minimum, the closure plan shall include a description of how the facility shall be closed, possible uses of the land after closure, anticipated time until closure, estimated time for closure, and each anticipated partial closure. Those facilities described in section 11116 shall submit a closure and, if required by rule, a postclosure plan with their operating license application.

(2) The department shall promulgate rules regarding notification before closure, length of time permitted for closure of the treatment, storage, or disposal facility, removal and decontamination of equipment, security, groundwater and leachate monitoring system, sampling analysis and reporting requirements, and any other pertinent requirements.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**Administrative rules:** R 299.9101 et seq. of the Michigan Administrative Code.

**324.11141 Cost of closing and postclosure monitoring and maintenance of facility; methods of assurance; amount; periodic adjustment; violation.**

Sec. 11141. An owner or operator of a treatment, storage, or disposal facility shall file, as a part of the application for a license to operate, a surety bond or other suitable instrument or mechanism or establish a secured trust fund, as approved by the department, to cover the cost of closing the treatment, storage, or disposal facility after its capacity is reached or operations have otherwise terminated. In addition, the owner or operator of a disposal facility shall also file a surety bond or other suitable instrument or mechanism or establish a secured trust fund, approved by the department, to cover the cost of postclosure monitoring and maintenance of the facility. An owner or operator may use a combination of bonds, instruments, mechanisms, or funds, as approved by the department, to satisfy the requirements of this section. The bond, instrument, mechanism, or fund, or combination of these methods of assurance, shall be in an amount equal to a reasonable estimate of the cost required to adequately close the facility, based on the level of operations proposed in the operating license application, and, with respect to a disposal facility, to monitor and maintain the site for a period of at least 30 years. The bond, instrument, mechanism, or fund, or the combination of these methods of assurance, shall be adjusted periodically as determined by rule to account for inflation or changes in the permitted level of operations. Failure to maintain the bond, instrument, mechanism, or fund, or combination of these methods of assurance, constitutes a violation of this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**Administrative rules:** R 299.9101 et seq. of the Michigan Administrative Code.

**324.11143 Hazardous waste service fund; creation; financing; uses of fund; administration; expenditures; expenses; rules.**

Sec. 11143. (1) There is created within the state treasury a hazardous waste service fund of not less than \$1,000,000.00 to be financed by appropriations for the following uses:

(a) For hazardous waste emergencies as defined by rule.

(b) For use in ensuring the closure and post closure monitoring and maintenance of treatment, storage, or disposal facilities.

(2) The department shall administer the fund and authorize expenditures upon a finding of actual or potential environmental damage caused by hazardous waste or when the owner or operator of the treatment, storage, or disposal facility is not fulfilling his or her obligation in regard to closure or postclosure monitoring and maintenance of the site and the surety bond, instrument, mechanism, or secured trust fund maintained by the owner or operator of a treatment, storage, or disposal facility as required by section 11141 is inadequate or is no longer in effect.

(3) After an expenditure from the fund, the department immediately shall request the attorney general to begin proceedings to recover any expenditure from the fund from the person responsible for the hazardous waste emergency or the owner or operator of a treatment, storage, or disposal facility who is not fulfilling his or her obligation in regard to closure or postclosure monitoring and maintenance of a facility. If the owner of the property refuses to pay expenses incurred, the expenses shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the laws of the state.

(4) The department shall promulgate rules to define a hazardous waste emergency and to establish the method of payment from the fund.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**324.11144 Inspection; filing report for licensed facility; complaint or allegation; record; investigation; report; notice of violation or emergency situation.**

Sec. 11144. (1) The department shall inspect and file a written report not less than 4 times per year for each licensed treatment, storage, and disposal facility.

(2) A person may register with the department a complaint or allegation of improper action or violation of this part, a rule, or a condition of the license to operate a treatment, storage, or disposal facility.

(3) Upon receipt of a complaint or allegation from a municipality, the department shall make a record of the complaint and shall order an inspection of the treatment, storage, or disposal facility, or other location of alleged violation to investigate the complaint or allegation within not more than 5 business days after receipt of the complaint or allegation. If a complaint or allegation is of a highly serious nature, as determined by the department, the facility or the location of the alleged violation shall be inspected as quickly as possible.

(4) Following an investigation of a complaint or allegation under subsection (3), the department shall make a written report to the municipality within 15 days.

(5) A person who has knowledge that hazardous waste is being treated, disposed of, or stored in violation of this part shall notify the department. A person who has knowledge that an emergency situation exists shall notify the department and the department of community health.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11145 Administration and enforcement of part by certified health department; certification procedures; rescission of certification; annual grant; costs; rules.**

Sec. 11145. (1) The department may certify a city, county, or district health department to administer and enforce portions of this part but only to an extent consistent with obtaining and maintaining authorization of the state's hazardous waste management program pursuant to sections 3006 to 3009 of subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6926 to 6929. Certification procedures shall be established by the department by rule. The department may rescind certification upon the request of the certified city, county, or district health department, or after reasonable notice and hearing, if the department finds that a certified health department is not administering and enforcing this part as required.

(2) In order for a certified health department to carry out the responsibilities authorized under this part, an annual grant shall be appropriated by the legislature from the general fund of the state to provide financial assistance to each certified health department. A certified health department shall be eligible to receive 100% of its reasonable costs as determined by the department based on criteria established by rule. The department shall promulgate rules for distribution of the appropriated funds.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**Administrative rules:** R 299.9101 et seq. of the Michigan Administrative Code.

### **324.11146 Request for information and records; purpose; court authorization; inspection; samples; probable cause as to violation; search and seizure; forfeiture.**

Sec. 11146. (1) Any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste shall furnish information relating to the hazardous wastes or permit access to and copying of all records relating to the hazardous wastes, or both, if the information and records are required to be kept under this part or the rules promulgated under this part, upon a request of the department, made for the purpose of developing a rule or enforcing or administering this part or a rule promulgated under this part. This subsection does not limit the department's authority to pursue appropriate court authorization in order to obtain information pertaining to enforcement actions under this part.

(2) The department may enter at reasonable times any treatment, storage, or disposal facility or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from and may inspect the facility or other place and obtain from any person samples of the hazardous wastes and samples of the containers or labeling of the wastes for the purpose of developing a rule or enforcing or administering this part or a rule promulgated under this part.

(3) If the department or a law enforcement official has probable cause to believe that a person is violating this part or a rule promulgated under this part, the department or law enforcement official may search without a warrant a vehicle or equipment that is possessed, used, or operated by that person. The department or a law enforcement official may seize a vehicle, equipment, or other property used or operated in a manner or for a purpose contrary to this part or a rule promulgated under this part. A vehicle, equipment, or other property used in violation of this part or a rule promulgated under this part is subject to seizure and forfeiture as

provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11147 Violation as misdemeanor; penalty; appearance ticket.**

Sec. 11147. A person who violates section 11132a(1)(b) or (n) or who violates rules promulgated under section 11132a(1)(b) or (n) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both, for each violation. A law enforcement officer or a conservation officer may issue an appearance ticket to a person who is in violation of section 11132a(1)(b) or (n) or the rules promulgated under section 11132a(1)(b) or (n).

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11148 Imminent and substantial hazard to health; endangering or causing damage to public health or environment; actions by director; determination.**

Sec. 11148. (1) Subject to subsection (2), upon receipt of information that the storage, transportation, treatment, or disposal of hazardous waste may present an imminent and substantial hazard to the health of persons or to the natural resources, or is endangering or causing damage to public health or the environment, the department, after consultation with the director of public health or a designated representative of the director of public health, shall take 1 or more of the following actions:

(a) Issue an order directing the owner or operator of the treatment, storage, or disposal facility, the generator, the transporter, or the custodian of the hazardous waste that constitutes the hazard, to take the steps necessary to prevent the act or eliminate the practice that constitutes the hazard. The order may include permanent or temporary cessation of the operation of a treatment, storage, or disposal facility, generator, or transporter. An order issued under this subdivision may be issued without prior notice or hearing and shall be complied with immediately. An order issued under this subdivision shall not remain in effect more than 7 days without affording the owner or operator or custodian an opportunity for a hearing. In issuing an order calling for corrective action, the department shall specify the precise nature of the corrective action necessary and the specific time limits for performing the corrective action. If corrective action is not completed within the time limit specified and pursuant to the department's requirements, the department shall issue a cease and desist order against the owner or operator of the treatment, storage, or disposal facility, generator, or transporter and initiate action to revoke the operating license and take appropriate action.

(b) Request that the attorney general commence an action to enjoin the act or practice and obtain injunctive relief upon a showing by the department that a person has engaged in the prohibited act or practice.

(c) Revoke a permit, license, or construction permit after reasonable notice and hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, if the department finds that a treatment, storage, or disposal facility is not, or has not been, constructed or operated pursuant to the approved plans or this part and the rules promulgated under this part, or the conditions of a license or construction permit.

(2) A determination of an instance of imminent and substantial hazard to the health of persons shall be made by the director of community health.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11149 Tearing down, removing, or destroying sign or notice as misdemeanor; penalty.**

Sec. 11149. A person who willfully tears down, removes, or destroys any sign or notice warning of the presence of hazardous waste or marking the boundaries of a hazardous waste treatment, storage, or disposal facility is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451



**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**324.11150 Order of noncompliance; order suspending or restricting license of facility.**

Sec. 11150. (1) Upon receipt and verification of information that a licensed storage, treatment, or disposal facility does not have or has not maintained a suitable instrument or mechanism required under section 11141, or that the hazardous waste at the licensed facility exceeds the maximum quantities allowed under the storage, treatment, or disposal facility's license issued under this part, the department may issue an order of noncompliance directing the owner or operator of the storage, treatment, or disposal facility to take steps to eliminate the act or practice that results in a violation listed in this section. An order issued pursuant to this section shall specify the corrective action necessary and may order a licensed facility that has exceeded the maximum quantities of hazardous waste allowed under the terms of the facility's license to cease receiving hazardous waste. The order shall specify the time limit in which corrective action must be completed. If a licensed storage, treatment, or disposal facility comes into compliance with this part following the issuance of an order of noncompliance, the department shall send written verification of compliance to the owner or operator of the facility.

(2) An order of noncompliance issued pursuant to subsection (1) that requires a licensed facility to reduce the quantity of hazardous waste on site and to cease receiving hazardous waste shall not remain in effect for more than 7 days without affording the owner or operator an opportunity for a hearing. If the order remains in effect following the hearing, or if the owner or operator of the facility waives his or her right to a hearing, the owner or operator shall cooperate with the department in developing and implementing a compliance plan to reduce the amount of hazardous waste at the facility. If the department determines that the owner or operator has failed to make reasonable and continuous efforts to comply with the order of noncompliance and the resulting compliance plan, the department may issue an order suspending or restricting the facility's license pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. An order provided for in this subsection that suspends or restricts a license following the licensed facility's failure to comply with an order of noncompliance provided for in this section shall not remain in effect for more than 7 days without affording the owner or operator of the facility an opportunity for a hearing to contest the suspension or restriction.

(3) If the owner or operator of a storage, treatment, or disposal facility receives an order of noncompliance issued pursuant to subsection (1) for failing to maintain a suitable instrument or mechanism required under section 11141 and does not make reasonable efforts to comply with the order of noncompliance, the department may issue an order suspending or restricting the facility's license pursuant to Act No. 306 of the Public Acts of 1969. An order provided for in this subsection that suspends or restricts a license following the licensed facility's failure to comply with an order of noncompliance provided for in this section shall not remain in effect for more than 7 days without affording the owner or operator of the facility an opportunity for a hearing to contest the suspension or restriction.

(4) Upon receipt and verification that a storage, treatment, or disposal facility has not maintained a suitable instrument or mechanism required under section 11141 or that hazardous waste at a licensed facility exceeds the maximum quantities allowed under the facility's license and the owner or operator of the facility has previously been issued an order of noncompliance under this section, the department may do either of the following:

(a) Issue a second or subsequent order of noncompliance and proceed in the manner provided for in subsection (2) or (3).

(b) Initiate an action to suspend or restrict the facility's license or permit pursuant to Act No. 306 of the Public Acts of 1969, without first issuing an order of noncompliance.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

**324.11151 Violation of permit, license, rule, or part; order requiring compliance; civil action; jurisdiction; imposition, collection, and disposition of fine; conduct constituting misdemeanor; penalty; state of mind and knowledge; affirmative defense; preponderance of evidence; definition; action for damages and costs; disposition and use of damages and costs collected; awarding costs of litigation; intervention.**

Sec. 11151. (1) If the department finds that a person is in violation of a permit, license, rule promulgated under this part, or requirement of this part including a corrective action requirement of this part, the

department may issue an order requiring the person to comply with the permit, license, rule, or requirement of this part including a corrective action requirement of this part. The attorney general or a person may commence a civil action against a person, the department, or a health department certified under section 11145 for appropriate relief, including injunctive relief for a violation of this part including a corrective action requirement of this part, or a rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court may impose a civil fine of not more than \$25,000.00 for each instance of violation and, if the violation is continuous, for each day of continued noncompliance. A fine collected under this subsection shall be deposited in the general fund of the state.

(2) A person who transports, treats, stores, disposes, or generates hazardous waste in violation of this part, or contrary to a permit, license, order, or rule issued or promulgated under this part, or who makes a false statement, representation, or certification in an application for, or form pertaining to, a permit, license, or order or in a notice or report required by the terms and conditions of an issued permit, license, or order, or a person who violates section 11144(5), is guilty of a misdemeanor punishable by a fine of not more than \$25,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or imprisonment for not more than 1 year, or both. If the conviction is for a violation committed after a first conviction of the person under this subsection, the person is guilty of a misdemeanor punishable by a fine of not more than \$50,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or by imprisonment for not more than 2 years, or both. Additionally, a person who is convicted of a violation under this subsection shall be ordered to pay all costs of corrective action associated with the violation.

(3) Any person who knowingly stores, treats, transports, or disposes of any hazardous waste in violation of subsection (2) and who knows at that time that he or she thereby places another person in imminent danger of death or serious bodily injury, and if his or her conduct in the circumstances manifests an unjustified and inexcusable disregard for human life, or if his or her conduct in the circumstances manifests an extreme indifference for human life, upon conviction, is subject to a fine of not more than \$250,000.00 or imprisonment for not more than 2 years, or both, except that any person whose actions constitute an extreme indifference for human life, upon conviction, is subject to a fine of not more than \$250,000.00 or imprisonment for not more than 5 years, or both. A defendant that is not an individual and not a governmental entity, upon conviction, is subject to a fine of not more than \$1,000,000.00. Additionally, a person who is convicted of a violation under this subsection shall be ordered to pay all costs of corrective action associated with the violation.

(4) For the purposes of subsection (3), a person's state of mind is knowing with respect to:

- (a) His or her conduct, if he or she is aware of the nature of his or her conduct.
- (b) An existing circumstance, if he or she is aware or believes that the circumstance exists.
- (c) A result of his or her conduct, if he or she is aware or believes that his or her conduct is substantially certain to cause danger of death or serious bodily injury.

(5) For purposes of subsection (3), in determining whether a defendant who is an individual knew that his or her conduct placed another person in imminent danger of death or serious bodily injury, both of the following apply:

- (a) The person is responsible only for actual awareness or actual belief that he or she possessed.
- (b) Knowledge possessed by a person other than the defendant but not by the defendant himself or herself may not be attributed to the defendant. However, in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.

(6) It is an affirmative defense to a prosecution under this part that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

- (a) An occupation, a business, or a profession.
- (b) Medical treatment or professionally approved methods and the other person had been made aware of the risks involved prior to giving consent.

(7) The defendant may establish an affirmative defense under subsection (6) by a preponderance of the evidence.

(8) For purposes of subsection (3), "serious bodily injury" means each of the following:

- (a) Bodily injury that involves a substantial risk of death.
- (b) Unconsciousness.
- (c) Extreme physical pain.

(d) Protracted and obvious disfigurement.

(e) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(9) In addition to a fine, the attorney general may bring an action in a court of competent jurisdiction to recover the full value of the damage done to the natural resources of this state and the costs of surveillance and enforcement by the state resulting from the violation. The damages and cost collected under this subsection shall be deposited in the general fund if the damages or costs result from impairment or destruction of the fish, wildlife, or other natural resources of the state and shall be used to restore, rehabilitate, or mitigate the damage to those resources in the affected area, and for the specific resource to which the damages occurred.

(10) The court, in issuing a final order in an action brought under this part, may award costs of litigation, including reasonable attorney and expert witness fees to a party, if the court determines that the award is appropriate.

(11) A person who has an interest that is or may be affected by a civil or administrative action commenced under this part has a right to intervene in that action.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 439, Eff. Mar. 23, 1999.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11152 Interstate and international cooperation; purpose.**

Sec. 11152. The department shall encourage interstate and international cooperation for the improved management of hazardous waste; for improved, and so far as is practicable, uniform state laws relating to the management of hazardous waste; and compacts between this and other states for the improved management of hazardous waste.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

### **324.11153 Site identification number; user charges; violations; suspension; definitions.**

Sec. 11153. (1) A generator, transporter, or treatment, storage, or disposal facility shall obtain and utilize a site identification number assigned by the United States environmental protection agency or the department. Until October 1, 2011, the department shall assess a site identification number user charge of \$50.00 for each site identification number it issues. The department shall not issue a site identification number under this subsection unless the site identification number user charge and the tax identification number for the person applying for the site identification number have been received by the department.

(2) Until October 1, 2011, except as provided in subsection (9), the department shall annually assess hazardous waste management program user charges as follows:

(a) A generator shall pay a handler user charge that is the highest of the following applicable fees:

(i) A generator who generates more than 100 kilograms but less than 1,000 kilograms of hazardous waste in any month during the calendar year shall pay to the department an annual handler user charge of \$100.00.

(ii) A generator who generates 1,000 kilograms or more of hazardous waste in any month during the calendar year and who generates less than 900,000 kilograms during the calendar year shall pay to the department an annual handler user charge of \$400.00.

(iii) A generator who generates 1,000 kilograms or more of hazardous waste in any month during the calendar year and who generates 900,000 kilograms or more of hazardous waste during the calendar year shall pay to the department an annual handler user charge of \$1,000.00.

(b) An owner or operator of a treatment, storage, or disposal facility for which an operating license is required under section 11123 or for which an operating license has been issued under section 11122 or 11125 shall pay to the department an annual handler user charge of \$2,000.00.

(c) A used oil processor or rerefiner, a used oil burner, or a used oil fuel marketer as defined in the rules promulgated under this part shall pay to the department an annual handler user charge of \$100.00.

(3) A handler shall pay the handler user charge specified in subsection (2)(a) to (c) for each of the activities conducted during the previous calendar year.

(4) Payment of the handler user charges shall be made using a form provided by the department. The handler shall certify that the information on the form is accurate. The department shall send forms to the handlers by March 30 of each year unless the handler user charges have been suspended as provided for in

subsection (9). A handler shall return the completed forms and the appropriate payment to the department by April 30 of each year unless the handler user charges have been suspended as provided for in subsection (9).

(5) A handler who fails to provide timely and accurate information, a complete form, or the appropriate handler user charge is in violation of this part and is subject to both of the following:

(a) Payment of the handler user charge and an administrative fine of 5% of the amount owed for each month that the payment is delinquent. Any payments received after the 15th of the month after the due date shall be considered delinquent for that month. However, the administrative fine shall not exceed 25% of the total amount owed.

(b) Beginning 5 months after the date payment of the handler user charge is due, but not paid, at the request of the department, an action by the attorney general for the collection of the amount owed under subdivision (a) and the actual cost to the department in attempting to collect the amount owed under subdivision (a).

(6) The department shall maintain information regarding the site identification number user charges under subsection (1) and the handler user charges received under this section as necessary to satisfy the reporting requirements of subsection (8).

(7) The site identification number user charges and the handler user charges collected under this section and any amounts collected under subsection (5) for a violation of this section shall be forwarded to the state treasurer and deposited in the environmental pollution prevention fund created in section 11130 and credited to the hazardous waste and liquid industrial waste users account created in section 11130(5).

(8) The department shall evaluate the effectiveness and adequacy of the site identification number user charges and the handler user charges collected under this section relative to the overall revenue needs of the state's hazardous waste management program administered under this part. Not later than April 1 of each even-numbered year, the department shall summarize its findings under this subsection in a report and shall provide that report to the legislature.

(9) Notwithstanding any other provision in this section, if the balance of the hazardous waste and liquid industrial waste users account created in section 11130(5), as of December 31 of any year, exceeds \$3,200,000.00, the department shall suspend the handler user charges until October of the following year.

(10) As used in this section:

(a) "Handler" means the person required to pay the handler user charge.

(b) "Handler user charge" means the annual hazardous waste management program user charge provided for in subsection (2).

**History:** Add. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 403, Imd. Eff. Jan. 6, 2009.

**Popular name:** Act 451

**Popular name:** Hazardous Waste Act

**Popular name:** NREPA

## PART 113 LANDFILL MAINTENANCE TRUST FUND

### **324.11301 Definitions.**

Sec. 11301. As used in this part:

(a) "Fund" means the landfill maintenance trust fund created in section 11302 .

(b) "Response activity" means response activity as defined in part 201.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11302 Landfill maintenance trust fund; creation; separate fund; revenue.**

Sec. 11302. (1) There is hereby created the landfill maintenance trust fund. The fund shall be established as a separate fund in the department of treasury.

(2) The fund shall receive as revenue money from any source not to exceed \$500,000.00, as appropriated by the legislature.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the  
Rendered Friday, January 22, 2010 Page 32 Michigan Compiled Laws Complete Through PA 242 of 2009

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11303 Expenditure of interest and earnings of fund; manner of maintaining corpus of fund.**

Sec. 11303. (1) The interest and earnings of the fund shall be expended by the department to monitor the effectiveness of response activity and to provide necessary long-term maintenance only at those landfills that are sites of polybrominated biphenyls contamination where the department has undertaken response activity through the use of funds appropriated by the state from a judicially approved settlement.

(2) The corpus of the fund shall be maintained by the state treasurer in a manner that will provide for future disbursements to the department to ensure that the sites described in subsection (1) are properly monitored and maintained for as long as considered necessary by the department to assure the protection of the public health, safety, welfare, and the environment.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11304 Investment of fund.**

Sec. 11304. The state treasurer shall direct the investment of the fund in the same manner as surplus funds are invested.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## **PART 115**

## **SOLID WASTE MANAGEMENT**

### **324.11501 Meanings of words and phrases.**

Sec. 11501. For purposes of this part, the words and phrases defined in sections 11502 to 11506 have the meanings ascribed to them in those sections.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11502 Definitions; A to C.**

Sec. 11502. (1) "Applicant" includes any person.

(2) "Ashes" means the residue from the burning of wood, coal, coke, refuse, wastewater sludge, or other combustible materials.

(3) "Beverage container" means an airtight metal, glass, paper, or plastic container, or a container composed of a combination of these materials, which, at the time of sale, contains 1 gallon or less of any of the following:

(a) A soft drink, soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drink.

(b) A beer, ale, or other malt drink of whatever alcoholic content.

(c) A mixed wine drink or a mixed spirit drink.

(4) "Bond" means a financial instrument executed on a form approved by the department, including a surety bond from a surety company authorized to transact business in this state, a certificate of deposit, a cash bond, an irrevocable letter of credit, insurance, a trust fund, an escrow account, or a combination of any of these instruments in favor of the department. The owner or operator of a disposal area who is required to establish a bond under other state or federal statute may petition the department to allow such a bond to meet the requirements of this part. The department shall approve a bond established under other state or federal statute if the bond provides equivalent funds and access by the department as other financial instruments allowed by this subsection.



(5) "Certificate of deposit" means a negotiable certificate of deposit held by a bank or other financial institution regulated and examined by a state or federal agency, the value of which is fully insured by an agency of the United States government. A certificate of deposit used to fulfill the requirements of this part shall be in the sole name of the department with a maturity date of not less than 1 year and shall be renewed not less than 60 days before the maturity date. An applicant who uses a certificate of deposit as a bond shall receive any accrued interest on that certificate of deposit upon release of the bond by the department.

(6) "Certified health department" means a city, county, or district department of health that is specifically delegated authority by the department to perform designated activities as prescribed by this part.

(7) "Coal or wood ash" means either or both of the following:

(a) The residue remaining after the ignition of coal or wood, or both, and may include noncombustible materials, otherwise referred to as bottom ash.

(b) The airborne residues from burning coal or wood, or both, that are finely divided particles entrained in flue gases arising from a combustion chamber, otherwise referred to as fly ash.

(8) "Collection center" means a tract of land, building, unit, or appurtenance or combination thereof that is used to collect junk motor vehicles and farm implements under section 11530.

(9) "Composting facility" means a facility where composting of yard clippings or other organic materials occurs using mechanical handling techniques such as physical turning, windrowing, or aeration or using other management techniques approved by the director.

(10) "Consistency review" means evaluation of the administrative and technical components of an application for a permit or license or evaluation of operating conditions in the course of inspection, for the purpose of determining consistency with the requirements of this part, rules promulgated under this part, and approved plans and specifications.

(11) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of constituents, as defined in a facility's approved hydrogeological monitoring plan, released into the environment from a disposal area, or the taking of other actions related to the release as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources that is consistent with 42 USC 6941 to 6949a and regulations promulgated thereunder.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2004, Act 35, Imd. Eff. Mar. 19, 2004;—Am. 2007, Act 212, Eff. Mar. 26, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11503 Definitions; D to W.**

Sec. 11503. (1) "De minimis" refers to a small amount of material or number of items, as applicable, commingled and incidentally disposed of with other solid waste.

(2) "Department" means the department of environmental quality.

(3) "Director" means the director of the department.

(4) "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a substance into the environment which is or may become injurious to the public health, safety, or welfare, or to the environment.

(5) "Disposal area" means 1 or more of the following at a location as defined by the boundary identified in its construction permit or engineering plans approved by the department:

(a) A solid waste transfer facility.

(b) Incinerator.

(c) Sanitary landfill.

(d) Processing plant.

(e) Other solid waste handling or disposal facility utilized in the disposal of solid waste.

(6) "Enforceable mechanism" means a legal method whereby the state, a county, a municipality, or another person is authorized to take action to guarantee compliance with an approved county solid waste management plan. Enforceable mechanisms include contracts, intergovernmental agreements, laws, ordinances, rules, and regulations.

(7) "Escrow account" means an account managed by a bank or other financial institution whose account operations are regulated and examined by a federal or state agency and which complies with section 11523b.

(8) "Farm" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(9) "Farm operation" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA

93, MCL 286.472.

(10) "Financial assurance" means the mechanisms used to demonstrate that the funds necessary to meet the cost of closure, postclosure maintenance and monitoring, and corrective action will be available whenever they are needed.

(11) "Financial test" means a corporate or local government financial test or guarantee approved for type II landfills under 42 USC 6941 to 6949a. An owner or operator may use a single financial test for more than 1 facility. Information submitted to the department to document compliance with the test shall include a list showing the name and address of each facility and the amount of funds assured by the test for each facility. For purposes of the financial test, the owner or operator shall aggregate the sum of the closure, postclosure, and corrective action costs it seeks to assure with any other environmental obligations assured by a financial test under state or federal law.

(12) "Food processing residuals" means any of the following:

(a) Residuals of fruits, vegetables, aquatic plants, or field crops.

(b) Otherwise unusable parts of fruits, vegetables, aquatic plants, or field crops from the processing thereof.

(c) Otherwise unusable food products which do not meet size, quality, or other product specifications and which were intended for human or animal consumption.

(13) "Garbage" means rejected food wastes including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that results from the preparation, use, cooking, dealing in, or storing of meat, fish, fowl, fruit, or vegetable matter.

(14) "Scrap wood" means wood or wood product that is 1 or more of the following:

(a) Plywood, pressed board, oriented strand board, or any other wood or wood product mixed with glue or filler.

(b) Wood or wood product treated with creosote or pentachlorophenol.

(c) Any other wood or wood product designated as scrap wood in rules promulgated by the department.

(15) "Treated wood" means wood or wood product that has been treated with 1 or more of the following:

(a) Chromated copper arsenate (CCA).

(b) Ammoniacal copper quat (ACQ).

(c) Ammoniacal copper zinc arsenate (ACZA).

(d) Any other chemical designated in rules promulgated by the department.

(16) "Wood" means trees, branches, bark, lumber, pallets, wood chips, sawdust, or other wood or wood product but does not include scrap wood, treated wood, painted wood or painted wood product, or any wood or wood product that has been contaminated during manufacture or use.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 1998, Act 466, Imd. Eff. Jan. 4, 1999;—Am. 2007, Act 212, Eff. Mar. 26, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11504 Definitions; H to T.**

Sec. 11504. (1) "Health officer" means a full-time administrative officer of a certified city, county, or district department of health.

(2) "Inert material" means a substance that will not decompose, dissolve, or in any other way form a contaminated leachate upon contact with water, or other liquids determined by the department as likely to be found at the disposal area, percolating through the substance.

(3) "Insurance" means insurance that conforms to the requirements of 40 C.F.R. 258.74(d) provided by an insurer who has a certificate of authority from the Michigan commissioner of insurance to sell this line of coverage. An applicant for an operating license shall submit evidence of the required coverage by submitting both of the following to the department:

(a) A certificate of insurance that uses wording approved by the department.

(b) A certified true and complete copy of the insurance policy.

(4) "Landfill" means a disposal area that is a sanitary landfill.

(5) "Letter of credit" means an irrevocable letter of credit that complies with 40 C.F.R. 258.74(c).

(6) "Medical waste" means that term as it is defined in part 138 of the public health code, Act No. 378 of the Public Acts of 1978, being sections 333.13801 to 333.13831 of the Michigan Compiled Laws.

(7) "Municipal solid waste incinerator" means an incinerator that is owned or operated by any person, and meets all of the following requirements:

(a) The incinerator receives solid waste from off site and burns only household waste from single and multiple dwellings, hotels, motels, and other residential sources, or this household waste together with solid waste from commercial, institutional, municipal, county, or industrial sources that, if disposed of, would not be required to be placed in a disposal facility licensed under part 111.

(b) The incinerator has established contractual requirements or other notification or inspection procedures sufficient to assure that the incinerator receives and burns only waste referred to in subdivision (a).

(c) The incinerator meets the requirements of this part and the rules promulgated under this part.

(d) The incinerator is not an industrial furnace as defined in 40 C.F.R. 260.10.

(e) The incinerator is not an incinerator that receives and burns only medical waste or only waste produced at 1 or more hospitals.

(8) "Municipal solid waste incinerator ash" means the substances remaining after combustion in a municipal solid waste incinerator.

(9) "Perpetual care fund" means a perpetual care fund provided for in section 11525.

(10) "Trust fund" means a trust fund held by a trustee which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A trust fund shall comply with section 11523b.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11505 Definitions; R, S.**

Sec. 11505. (1) "Recyclable materials" means source separated materials, site separated materials, high grade paper, glass, metal, plastic, aluminum, newspaper, corrugated paper, yard clippings, and other materials that may be recycled or composted.

(2) "Regional solid waste management planning agency" means the regional solid waste planning agency designated by the governor pursuant to 42 USC 6946.

(3) "Resource recovery facility" means machinery, equipment, structures, or any parts or accessories of machinery, equipment, or structures, installed or acquired for the primary purpose of recovering materials or energy from the waste stream.

(4) "Response activity" means an activity that is necessary to protect the public health, safety, welfare, or the environment, and includes, but is not limited to, evaluation, cleanup, removal, containment, isolation, treatment, monitoring, maintenance, replacement of water supplies, and temporary relocation of people.

(5) "Rubbish" means nonputrescible solid waste, excluding ashes, consisting of both combustible and noncombustible waste, including paper, cardboard, metal containers, yard clippings, wood, glass, bedding, crockery, demolished building materials, or litter of any kind that may be a detriment to the public health and safety.

(6) "Salvaging" means the lawful and controlled removal of reusable materials from solid waste.

(7) "Site separated material" means glass, metal, wood, paper products, plastics, rubber, textiles, garbage, or any other material approved by the department that is separated from solid waste for the purpose of conversion into raw materials or new products. Site separated material does not include the residue remaining after glass, metal, wood, paper products, plastics, rubber, textiles, or any other material approved by the department is separated from solid waste.

(8) "Slag" means the nonmetallic product resulting from melting or smelting operations for iron or steel.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2007, Act 212, Eff. Mar. 26, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11506 Definitions; S to Y.**

Sec. 11506. (1) "Solid waste" means garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, municipal and industrial sludges, solid commercial and solid industrial waste, and animal waste other than organic waste generated in the production of livestock and poultry. However, solid waste does not include the following:

(a) Human body waste.

(b) Medical waste as it is defined in part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13831, and regulated under that part and part 55.

- (c) Organic waste generated in the production of livestock and poultry.
- (d) Liquid waste.
- (e) Ferrous or nonferrous scrap directed to a scrap metal processor or to a reuser of ferrous or nonferrous products.

(f) Slag or slag products directed to a slag processor or to a reuser of slag or slag products.

(g) Sludges and ashes managed as recycled or nondetrimental materials appropriate for agricultural or silvicultural use pursuant to a plan approved by the department. Food processing residuals; wood ashes resulting solely from a source that burns only wood that is untreated and inert; lime from kraft pulping processes generated prior to bleaching; or aquatic plants may be applied on, or composted and applied on, farmland or forestland for an agricultural or silvicultural purpose, or used as animal feed, as appropriate, and such an application or use does not require a plan described in this subdivision or a permit or license under this part. In addition, source separated materials approved by the department for land application for agricultural and silvicultural purposes and compost produced from those materials may be applied to the land for agricultural and silvicultural purposes and such an application does not require a plan described in this subdivision or permit or license under this part. Land application authorized under this subdivision for an agricultural or silvicultural purpose, or use as animal feed, as provided for in this subdivision shall be performed in a manner that prevents losses from runoff and leaching. Land application under this subdivision shall be at an agronomic rate consistent with generally accepted agricultural and management practices under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(h) Materials approved for emergency disposal by the department.

(i) Source separated materials.

(j) Site separated material.

(k) Fly ash or any other ash produced from the combustion of coal, when used in the following instances:

(i) With a maximum of 6% of unburned carbon as a component of concrete, grout, mortar, or casting molds.

(ii) With a maximum of 12% unburned carbon passing M.D.O.T. test method MTM 101 when used as a raw material in asphalt for road construction.

(iii) As aggregate, road, or building material that in ultimate use will be stabilized or bonded by cement, limes, or asphalt.

(iv) As a road base or construction fill that is covered with asphalt, concrete, or other material approved by the department and that is placed at least 4 feet above the seasonal groundwater table.

(v) As the sole material in a depository designed to reclaim, develop, or otherwise enhance land, subject to the approval of the department. In evaluating the site, the department shall consider the physical and chemical properties of the ash including leachability, and the engineering of the depository, including, but not limited to, the compaction, control of surface water and groundwater that may threaten to infiltrate the site, and evidence that the depository is designed to prevent water percolation through the material.

(l) Other wastes regulated by statute.

(2) "Solid waste hauler" means a person who owns or operates a solid waste transporting unit.

(3) "Solid waste processing plant" means a tract of land, building, unit, or appurtenance of a building or unit or a combination of land, buildings, and units that is used or intended for use for the processing of solid waste or the separation of material for salvage or disposal, or both, but does not include a plant engaged primarily in the acquisition, processing, and shipment of ferrous or nonferrous metal scrap, or a plant engaged primarily in the acquisition, processing, and shipment of slag or slag products.

(4) "Solid waste transporting unit" means a container that may be an integral part of a truck or other piece of equipment used for the transportation of solid waste.

(5) "Solid waste transfer facility" means a tract of land, a building and any appurtenances, or a container, or any combination of land, buildings, or containers that is used or intended for use in the rehandling or storage of solid waste incidental to the transportation of the solid waste, but is not located at the site of generation or the site of disposal of the solid waste.

(6) "Source separated material" means glass, metal, wood, paper products, plastics, rubber, textiles, garbage, or any other material approved by the department that is separated at the source of generation for the purpose of conversion into raw materials or new products including, but not limited to, compost.

(7) "Type I public water supply", "type IIa public water supply", "type IIb public water supply", and "type III public water supply" mean those terms, respectively, as described in R 325.10502 of the Michigan administrative code.

(8) "Yard clippings" means leaves, grass clippings, vegetable or other garden debris, shrubbery, or brush or tree trimmings, less than 4 feet in length and 2 inches in diameter, that can be converted to compost humus. Yard clippings do not include stumps, agricultural wastes, animal waste, roots, sewage sludge, or garbage.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 65, Imd. Eff. May 31, 1995;—Am. 1996, Act 392, Imd. Eff. Oct. 3, 1996;—Am. 1998, Act 466, Imd. Eff. Jan. 4, 1999;—Am. 2007, Act 212, Eff. Mar. 26, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11507 Development of methods for disposal of solid waste; construction and administration of part; exemption of inert material from regulation.**

Sec. 11507. (1) The department and a health officer shall assist in developing and encouraging methods for the disposal of solid waste that are environmentally sound, that maximize the utilization of valuable resources, and that encourage resource conservation including source reduction and source separation.

(2) This part shall be construed and administered to encourage and facilitate the effort of all persons to engage in source separation and site separation of material from solid waste, and other environmentally sound measures to prevent materials from entering the waste stream or which encourage the removal of materials from the waste stream.

(3) The department may exempt from regulation under this part solid waste that is determined by the department to be inert material for uses and in a manner approved by the department.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11507a Report on amount of solid waste received by landfill and amount of remaining disposal capacity.**

Sec. 11507a. (1) The owner or operator of a landfill shall annually submit a report to the state and the county and municipality in which the landfill is located that contains information on the amount of solid waste received by the landfill during the year itemized, to the extent possible, by county, state, or country of origin and the amount of remaining disposal capacity at the landfill. Remaining disposal capacity shall be calculated as the permitted capacity less waste in place for any area that has been constructed and is not yet closed plus the permitted capacity for each area that has a permit for construction under this part but has not yet been constructed. The report shall be submitted on a form provided by the department within 45 days following the end of each state fiscal year.

(2) By January 31 of each year, the department shall submit to the legislature a report summarizing the information obtained under subsection (1).

**History:** Add. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2004, Act 39, Imd. Eff. Mar. 29, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11508 Solid waste management program; certification.**

Sec. 11508. A city, county, or district health department may be certified by the department to perform a solid waste management program. Certification procedures shall be established by the department by rule. The department may rescind certification upon request of the certified health department or after reasonable notice and hearing if the department finds that a certified health department is not performing the program as required.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11509 Construction permit for establishment of disposal area; application; engineering plan; construction permit application fee for landfill; construction permit for solid waste transfer facility, solid waste processing plant, or other disposal area; fees; fee refund; permit denial; resubmission of application with additional information; modification or renewal of permit; multiple permits; disposition of fees.**

Sec. 11509. (1) Except as otherwise provided in section 11529, a person shall not establish a disposal area



except as authorized by a construction permit issued by the department pursuant to part 13. In addition, a person shall not establish a disposal area contrary to an approved solid waste management plan, or contrary to a permit, license, or final order issued pursuant to this part. A person proposing the establishment of a disposal area shall apply for a construction permit to the department through the health officer. If the disposal area is located in a county or city that does not have a certified health department, the application shall be made directly to the department.

(2) The application for a construction permit shall contain the name and residence of the applicant, the location of the proposed disposal area, the design capacity of the disposal area, and other information specified by rule. A person may apply to construct more than 1 type of disposal area at the same facility under a single permit. The application shall be accompanied by an engineering plan and a construction permit application fee. A construction permit application for a landfill shall be accompanied by a fee in an amount that is the sum of all of the following fees, as applicable:

(a) For a new sanitary landfill, a fee equal to the following amount:

(i) For a municipal solid waste landfill, \$1,500.00.

(ii) For an industrial waste landfill, \$1,000.00.

(iii) For a type III landfill limited to low hazard industrial waste, \$750.00.

(b) For a lateral expansion of a sanitary landfill, a fee equal to the following amount:

(i) For a municipal solid waste landfill, \$1,000.00.

(ii) For an industrial waste landfill, \$750.00.

(iii) For a type III landfill limited to low hazard industrial waste, construction and demolition waste, or other nonindustrial waste, \$500.00.

(c) For a vertical expansion of an existing sanitary landfill, a fee equal to the following amount:

(i) For a municipal solid waste landfill, \$750.00.

(ii) For an industrial waste landfill, \$500.00.

(iii) For an industrial waste landfill limited to low hazard industrial waste, construction and demolition waste, or other nonindustrial waste, \$250.00.

(3) The application for a construction permit for a solid waste transfer facility, a solid waste processing plant, other disposal area, or a combination of these, shall be accompanied by a fee in the following amount:

(a) For a new facility for municipal solid waste, or a combination of municipal solid waste and waste listed in subdivision (b), \$1,000.00.

(b) For a new facility for industrial waste, or construction and demolition waste, \$500.00.

(c) For the expansion of an existing facility for any type of waste, \$250.00.

(4) If an application is returned to the applicant as administratively incomplete, the department shall refund the entire fee. If a permit is denied or an application is withdrawn, the department shall refund 1/2 the amount specified in subsection (3) to the applicant. An applicant for a construction permit, within 12 months after a permit denial or withdrawal, may resubmit the application and the refunded portion of the fee, together with the additional information as needed to address the reasons for denial, without being required to pay an additional application fee.

(5) An application for a modification to a construction permit or for renewal of a construction permit which has expired shall be accompanied by a fee of \$250.00. Increases in final elevations that do not result in an increase in design capacity or a change in the solid waste boundary shall be considered a modification and not a vertical expansion.

(6) A person who applies to permit more than 1 type of disposal area at the same facility shall pay a fee equal to the sum of the applicable fees listed in this section.

(7) The department shall deposit permit application fees collected under this section in the solid waste staff account of the solid waste management fund established in section 11550.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11510 Advisory analysis of proposed disposal area; duties of department upon receipt of construction permit application.**

Sec. 11510. (1) Before the submission of a construction permit application for a new disposal area, the applicant shall request a health officer or the department to provide an advisory analysis of the proposed disposal area. However, the applicant, not less than 15 days after the request, and notwithstanding an analysis result, may file an application for a construction permit.

(2) Upon receipt of a construction permit application, the department shall do all of the following:

(a) Immediately notify the clerk of the municipality in which the disposal area is located or proposed to be located, the local soil erosion and sedimentation control agency, each division within the department and the department of natural resources that has responsibilities in land, air, or water management, and the designated regional solid waste management planning agency.

(b) Publish a notice in a newspaper having major circulation in the vicinity of the proposed disposal area. The required published notice shall contain a map indicating the location of the proposed disposal area and shall contain a description of the proposed disposal area and the location where the complete application package may be reviewed and where copies may be obtained.

(c) Indicate in the public, departmental, and municipality notice that the department shall hold a public hearing in the area of the proposed disposal area if a written request is submitted by the applicant or a municipality within 30 days after the date of publication of the notice, or by a petition submitted to the department containing a number of signatures equal to not less than 10% of the number of registered voters of the municipality where the proposed disposal area is to be located who voted in the last gubernatorial election. The petition shall be validated by the clerk of the municipality. The public hearing shall be held after the department makes a preliminary review of the application and all pertinent data and before a construction permit is issued or denied.

(d) Conduct a consistency review of the plans of the proposed disposal area to determine if it complies with this part and the rules promulgated under this part. The review shall be made by persons qualified in hydrogeology and sanitary landfill engineering. A written acknowledgment that the application package is in compliance with the requirements of this part and rules promulgated under this part by the persons qualified in hydrogeology and sanitary landfill engineering shall be received before a construction permit is issued. If the consistency review of the site and the plans and the application meet the requirements of this part and the rules promulgated under this part, the department shall issue a construction permit that may contain a stipulation specifically applicable to the site and operation. Except as otherwise provided in section 11542, an expansion of the area of a disposal area, an enlargement in capacity of a disposal area, or an alteration of a disposal area to a different type of disposal area than had been specified in the previous construction permit application constitutes a new proposal for which a new construction permit is required. The upgrading of a disposal area type required by the department to comply with this part or the rules promulgated under this part or to comply with a consent order does not require a new construction permit.

(e) Notify the Michigan aeronautics commission if the disposal area is a sanitary landfill that is a new site or a lateral extension or vertical expansion of an existing unit proposed to be located within 5 miles of a runway or a proposed runway extension contained in a plan approved by the Michigan aeronautics commission of an airport licensed and regulated by the Michigan aeronautics commission. The department shall make a copy of the application available to the Michigan aeronautics commission. If, after a period of time for review and comment not to exceed 60 days, the Michigan aeronautics commission informs the department that it finds that operation of the proposed disposal area would present a potential hazard to air navigation and presents the basis for its findings, the department may either recommend appropriate changes in the location, construction, or operation of the proposed disposal area or deny the application for a construction permit. The department shall give an applicant an opportunity to rebut a finding of the Michigan aeronautics commission that the operation of a proposed disposal area would present a potential hazard to air navigation. The Michigan aeronautics commission shall notify the department and the owner or operator of a landfill if the Michigan aeronautics commission is considering approving a plan that would provide for a runway or the extension of a runway within 5 miles of a landfill.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 1998, Act 397, Imd. Eff. Dec. 17, 1998.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11511 Construction permit; approval or denial of issuance; expiration; renewal; fee; additional information; conditions to issuance of construction permit for disposal area.**

Sec. 11511. (1) The department shall notify the clerk of the municipality in which the disposal area is proposed to be located and the applicant of its approval or denial of an application for a construction permit within 10 days after the final decision is made.

(2) A construction permit shall expire 1 year after the date of issuance, unless development under the construction permit is initiated within that year. A construction permit that has expired may be renewed upon payment of a permit renewal fee and submission of any additional information the department may require.

(3) Except as otherwise provided in this subsection, the department shall not issue a construction permit for a disposal area within a planning area unless a solid waste management plan for that planning area has been approved pursuant to sections 11536 and 11537 and unless the disposal area complies with and is consistent with the approved solid waste management plan. The department may issue a construction permit for a disposal area designed to receive ashes produced in connection with the combustion of fossil fuels for electrical power generation in the absence of an approved county solid waste management plan, upon receipt of a letter of approval from whichever county or counties, group of municipalities, or regional planning agency has prepared or is preparing the county solid waste management plan for that planning area under section 11533 and from the municipality in which the disposal area is to be located.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11511a Repealed. 2004, Act 38, Eff. Jan. 1, 2006.**

**Compiler's note:** The repealed section pertained to permit to construct, modify, or expand landfill.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11511b RDDP.**

Sec. 11511b. (1) A person may submit to the department a project abstract for an RDDP. If, based on the project abstract, the director determines that the RDDP will provide beneficial data on alternative landfill design, construction, or operating methods, the person may apply for a construction permit under section 11509, including the renewal or modification of a construction permit, authorizing the person to establish the RDDP.

(2) An RDDP is subject to the same requirements, including, but not limited to, permitting, construction, licensing, operation, closure, postclosure, financial assurance, fees, and sanctions as apply to other type II landfills or landfill units under this part and the rules promulgated under this part, except as provided in this section.

(3) An extension of the processing period for the permit is not subject to the 20% limitation under section 1307.

(4) An application for an RDDP construction permit shall include, in addition to the applicable information required in other type II landfill construction permit applications, all of the following:

(a) A description of the RDDP goals.

(b) Details of the design, construction, and operation of the RDDP as necessary to ensure protection of human health and the environment. The design shall be at least as protective of human health and the environment as other designs that are required under this part and rules promulgated under this part.

(c) A list and discussion of the types of waste being disposed of, excluded, or added, including the types and amount of liquids being added and how their addition will benefit the RDDP.

(d) A list and discussion of the types of compliance monitoring and operational monitoring that will be performed.

(e) Specific means to address potential nuisance conditions, including, but not limited to, odors and health concerns as a result of human contact.

(5) The department may authorize the addition of liquids, including, but not limited to, septage waste or other liquid waste, to solid waste in an RDDP if the applicant has demonstrated that the addition is necessary to accelerate or enhance the biostabilization of the solid waste and is not merely a means of disposal of the liquid. The department may require that the septage waste, or any other liquid waste, added to an RDDP originate within the county where the RDDP is located or any county contiguous to the county where the RDDP is located. If an RDDP is intended to accelerate or enhance biostabilization of solid waste, the construction permit application shall include, in addition to the requirements of subsection (4), all of the following:

(a) An evaluation of the potential for a decreased slope stability of the waste caused by any of the following:

(i) Increased presence of liquids.

(ii) Accelerated degradation of the waste.

(iii) Increased gas pressure buildup.

- (iv) Other relevant factors.
- (b) An operations management plan that incorporates all of the following:
  - (i) A description of and the proportion and expected quantity of all components that are needed to accelerate or enhance biostabilization of the solid waste.
  - (ii) A description of any solid or liquid waste that may be detrimental to the biostabilization of the solid waste intended to be disposed of or to the RDDP goals.
  - (iii) An explanation of how the detrimental waste described in subparagraph (ii) will be prevented from being disposed of in cells approved for the RDDP.
  - (c) Parameters, such as moisture content, stability, gas production, and settlement, that will be used by the department to determine when it will authorize postclosure of the RDDP under subsection (10).
  - (d) Information to ensure that the requirements of subsection (6) will be met.
- (6) An RDDP shall meet all of the following requirements:
  - (a) Ensure that added liquids are evenly distributed and that side slope breakout of liquids is prevented.
  - (b) Ensure that daily cover practices or disposal of low permeability solid wastes does not adversely affect the free movement of liquids and gases within the waste mass.
  - (c) Include all of the following:
    - (i) A means to monitor the moisture content and temperature of the waste.
    - (ii) A secondary liner and leachate collection system to monitor the effectiveness of the primary liner.
    - (iii) A leachate collection system of adequate size for the anticipated increased liquid production rates. The design factor of safety shall take into account the anticipated increased operational temperatures and other factors as appropriate.
    - (iv) A means to monitor the depth of leachate on the liner.
  - (v) An integrated active gas collection system. The system shall be of adequate size for the anticipated methane production rates and to control odors. The system shall be operational before the addition of any material to accelerate or enhance biostabilization of the solid waste.
- (7) The owner or operator of an RDDP for which a construction permit has been issued shall submit a report to the director at least once every 12 months on the progress of the RDDP in achieving its goals. The report shall include a summary of all monitoring and testing results, as well as any other operating information specified by the director in the permit or in a subsequent permit modification or operating condition.
- (8) A permit for an RDDP shall specify its term, which shall not exceed 3 years. However, the owner or operator of an RDDP may apply for and the department may grant an extension of the term of the permit, subject to all of the following requirements:
  - (a) The application to extend the term of the permit must be received by the department at least 90 days before the expiration of the permit.
  - (b) The application shall include a detailed assessment of the RDDP showing the progress of the RDDP in achieving its goals, a list of problems with the RDDP and progress toward resolving those problems, and other information that the director determines is necessary to accomplish the purposes of this part.
  - (c) If the department fails to make a final decision within 90 days of receipt of an administratively complete application for an extension of the term of a permit, the term of the permit is considered extended for 3 years.
  - (d) An individual extension shall not exceed 3 years, and the total term of the permit with all extensions shall not exceed 12 years.
- (9) At any time the director determines that the overall goals of an RDDP, including, but not limited to, protection of human health or the environment, are not being achieved, the director may order immediate termination of all or part of the operations of the RDDP or may order other corrective measures.
- (10) The postclosure period for a facility authorized as an RDDP begins when the department determines that the unit or portion of the unit where the RDDP was authorized has reached a condition similar to that which landfills that were not authorized as RDDPs would reach prior to postclosure. The parameters, such as moisture content, stability, gas production, and settlement, to attain this condition shall be specified in the permit. The perpetual care fund required under section 11525 shall be maintained for the period after final closure of the landfill as specified under section 11525.
- (11) The director may authorize the conversion of an RDDP to a full-scale operation if the owner or operator of the RDDP demonstrates to the satisfaction of the director that the goals of the RDDP have been met and the authorization does not constitute a less stringent permitting requirement than is required under subtitle D of the solid waste disposal act, 42 USC 6941 to 6949a.
- (12) As used in this section, "RDDP" means a research, development, and demonstration project for a new or existing type II landfill unit or for a lateral expansion of a type II landfill unit.

**History:** Add. 2005, Act 236, Imd. Eff. Nov. 22, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11512 Disposal of solid waste at licensed disposal area; license required to conduct, manage, maintain, or operate disposal area; application; contents; fee; certification; resubmitting application; additional information or corrections; operation of incinerator without operating license; additional fees.**

Sec. 11512. (1) A person shall dispose of solid waste at a disposal area licensed under this part unless a person is permitted by state law or rules promulgated by the department to dispose of the solid waste at the site of generation.

(2) Except as otherwise provided in this section or in section 11529, a person shall not conduct, manage, maintain, or operate a disposal area within this state except as authorized by an operating license issued by the department pursuant to part 13. In addition, a person shall not conduct, manage, maintain, or operate a disposal area contrary to an approved solid waste management plan, or contrary to a permit, license, or final order issued under this part. A person who intends to conduct, manage, maintain, or operate a disposal area shall submit a license application to the department through a certified health department. If the disposal area is located in a county or city that does not have a certified health department, the application shall be made directly to the department. A person authorized by this part to operate more than 1 type of disposal area at the same facility may apply for a single license.

(3) The application for a license shall contain the name and residence of the applicant, the location of the proposed or existing disposal area, the type or types of disposal area proposed, evidence of bonding, and other information required by rule. In addition, an applicant for a type II landfill shall submit evidence of financial assurance adequate to meet the requirements of section 11523a, the maximum waste slope in the active portion, an estimate of remaining permitted capacity, and documentation on the amount of waste received at the disposal area during the previous license period or expected to be received, whichever is greater. The application shall be accompanied by a fee as specified in subsections (7), (9), and (10).

(4) At the time of application for a license for a disposal area, the applicant shall submit to a health officer or the department a certification under the seal of a licensed professional engineer verifying that the construction of the disposal area has proceeded according to the approved plans. If construction of the disposal area or a portion of the disposal area is not complete, the department shall require additional construction certification of that portion of the disposal area during intermediate progression of the operation, as specified in section 11516(5).

(5) An applicant for an operating license, within 6 months after a license denial, may resubmit the application, together with additional information or corrections as are necessary to address the reason for denial, without being required to pay an additional application fee.

(6) In order to conduct tests and assess operational capabilities, the owner or operator of a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit may operate the incinerator without an operating license, upon notice to the department, for a period not to exceed 60 days.

(7) The application for a type II landfill operating license shall be accompanied by the following fee for the 5-year term of the operating license, calculated in accordance with subsection (8):

- (a) Landfills receiving less than 100 tons per day, \$250.00.
- (b) Landfills receiving 100 tons per day or more, but less than 250 tons per day, \$1,000.00.
- (c) Landfills receiving 250 tons per day or more, but less than 500 tons per day, \$2,500.00.
- (d) Landfills receiving 500 tons per day or more, but less than 1,000 tons per day, \$5,000.00.
- (e) Landfills receiving 1,000 tons per day or more, but less than 1,500 tons per day, \$10,000.00.
- (f) Landfills receiving 1,500 tons per day or more, but less than 3,000 tons per day, \$20,000.00.
- (g) Landfills receiving greater than 3,000 tons per day, \$30,000.00.

(8) Type II landfill application fees shall be based on the average amount of waste projected to be received daily during the license period. Application fees for license renewals shall be based on the average amount of waste received in the previous calendar year. Application fees shall be adjusted in the following circumstances:

(a) If a landfill accepts more waste than projected, a supplemental fee equal to the difference shall be submitted with the next license application.

(b) If a landfill accepts less waste than projected, the department shall credit the applicant an amount equal to the difference with the next license application.

(c) A type II landfill that measures waste by volume rather than weight shall pay a fee based on 3 cubic



yards per ton.

(d) A landfill used exclusively for municipal solid waste incinerator ash that measures waste by volume rather than weight shall pay a fee based on 1 cubic yard per ton.

(e) If an application is submitted to renew a license more than 1 year prior to license expiration, the department shall credit the applicant an amount equal to 1/2 the application fee.

(f) If an application is submitted to renew a license more than 6 months but less than 1 year prior to license expiration, the department shall credit the applicant an amount equal to 1/4 the application fee.

(9) The operating license application for a type III landfill shall be accompanied by a fee equal to \$2,500.00.

(10) The operating license application for a solid waste processing plant, solid waste transfer facility, other disposal area, or combination of these entities shall be accompanied by a fee equal to \$500.00.

(11) The department shall deposit operating license application fees collected under this section in the perpetual care account of the solid waste management fund established in section 11550.

(12) A person who applies for an operating license for more than 1 type of disposal area at the same facility shall pay a fee equal to the sum of the applicable application fees listed in this section.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11513 Acceptance of solid waste or municipal solid waste incinerator ash for disposal; enforcement.**

Sec. 11513. A person shall not accept for disposal solid waste or municipal solid waste incinerator ash that is not generated in the county in which the disposal area is located unless the acceptance of solid waste or municipal solid waste incinerator ash that is not generated in the county is explicitly authorized in the approved county solid waste management plan. The department shall take action to enforce this section within 30 days of obtaining knowledge of a violation of this section.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11514 Promotion of recycling and reuse of materials; electronics recycling; materials prohibited from disposal in landfill; disposal of yard clippings; report.**

Sec. 11514. (1) Optimizing recycling opportunities, including electronics recycling opportunities, and the reuse of materials shall be a principal objective of the state's solid waste management plan. Recycling and reuse of materials, including the reuse of materials from electronic devices, are in the best interest of promoting the public health and welfare. The state shall develop policies and practices that promote recycling and reuse of materials and, to the extent practical, minimize the use of landfilling as a method for disposal of its waste. Policies and practices that promote recycling and reuse of materials, including materials from electronic devices, will conserve raw materials, conserve landfill space, and avoid the contamination of soil and groundwater from heavy metals and other pollutants.

(2) A person shall not knowingly deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, knowingly permit disposal in the landfill of, any of the following:

(a) Medical waste, unless that medical waste has been decontaminated or is not required to be decontaminated but is packaged in the manner required under part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13831.

(b) More than a de minimis amount of open, empty, or otherwise used beverage containers.

(c) More than a de minimis number of whole motor vehicle tires.

(d) More than a de minimis amount of yard clippings, unless they are diseased, infested, or composed of invasive species as authorized by section 11521(1)(i).

(3) A person shall not deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, permit disposal in the landfill of, any of the following:

(a) Used oil as defined in section 16701.

(b) A lead acid battery as defined in section 17101.

(c) Low-level radioactive waste as defined in section 2 of the low-level radioactive waste authority act,

1987 PA 204, MCL 333.26202.

(d) Regulated hazardous waste as defined in R 299.4104 of the Michigan administrative code.

(e) Bulk or noncontainerized liquid waste or waste that contains free liquids, unless the waste is 1 of the following:

(i) Household waste other than septage waste.

(ii) Leachate or gas condensate that is approved for recirculation.

(iii) Septage waste or other liquids approved for beneficial addition under section 11511b.

(f) Sewage.

(g) PCBs as defined in 40 CFR 761.3.

(h) Asbestos waste, unless the landfill complies with 40 CFR 61.154.

(4) A person shall not knowingly deliver to a municipal solid waste incinerator for disposal, or, if the person is an owner or operator of a municipal solid waste incinerator, knowingly permit disposal in the incinerator of, more than a de minimis amount of yard clippings, unless they are diseased, infested, or composed of invasive species as authorized by section 11521(1)(i). The department shall post, and a solid waste hauler that disposes of solid waste in a municipal solid waste incinerator shall provide its customers with, notice of the prohibitions of this subsection in the same manner as provided in section 11527a.

(5) If the department determines that a safe, sanitary, and feasible alternative does not exist for the disposal in a landfill or municipal solid waste incinerator of any items described in subsection (2) or (4), respectively, the department shall submit a report setting forth that determination and the basis for the determination to the standing committees of the senate and house of representatives with primary responsibility for solid waste issues.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 34, Imd. Eff. Mar. 29, 2004;—Am. 2005, Act 243, Imd. Eff. Nov. 22, 2005;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

#### **324.11515 Inspection of site; compliance; hydrogeologic monitoring program as condition to licensing landfill facility; determining course of action; revocation of license; issuance of timetable or schedule.**

Sec. 11515. (1) Upon receipt of a license application, the department or a health officer or an authorized representative of a health officer shall inspect the site and determine if the proposed operation complies with this part and the rules promulgated under this part.

(2) The department shall not license a landfill facility operating without an approved hydrogeologic monitoring program until the department receives a hydrogeologic monitoring program and the results of the program. The department shall use this information in conjunction with other information required by this part or the rules promulgated under this part to determine a course of action regarding licensing of the facility consistent with section 4005 of subtitle D of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6945, and with this part and the rules promulgated pursuant to this part. In deciding a course of action, the department shall consider, at a minimum, the health hazards, environmental degradation, and other public or private alternatives. The department may revoke a license or issue a timetable or schedule to provide for compliance for the facility or operation, specifying a schedule of remedial measures, including a sequence of actions or operations, which leads to compliance with this part within a reasonable time period but not later than December 2, 1987.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

#### **324.11516 Final decision on license application; time; effect of failure to make final decision; expiration and renewal of operating license; fee; entry on private or public property; inspection or investigation; conditions to issuance of operating license for new disposal area; issuance of license as authority to accept waste for disposal.**

Sec. 11516. (1) The department shall conduct a consistency review before making a final decision on a license application. The department shall notify the clerk of the municipality in which the disposal area is located and the applicant of its approval or denial of a license application within 10 days after the final decision is made.

(2) An operating license shall expire 5 years after the date of issuance. An operating license may be renewed before expiration upon payment of a renewal application fee specified in section 11512(8) if the licensee is in compliance with this part and the rules promulgated under this part.

(3) The issuance of the operating license under this part empowers the department or a health officer or an authorized representative of a health officer to enter at any reasonable time, pursuant to law, in or upon private or public property licensed under this part for the purpose of inspecting or investigating conditions relating to the storage, processing, or disposal of any material.

(4) Except as otherwise provided in this subsection, the department shall not issue an operating license for a new disposal area within a planning area unless a solid waste management plan for that planning area has been approved pursuant to sections 11536 and 11537 and unless the disposal area complies with and is consistent with the approved solid waste management plan. The department may issue an operating license for a disposal area designed to receive ashes produced in connection with the combustion of fossil fuels for electrical power generation in the absence of an approved county solid waste management plan, upon receipt of a letter of approval from whichever county or counties, group of municipalities, or regional planning agency has prepared or is preparing the county solid waste management plan for that planning area under section 11533 and from the municipality in which the disposal area is to be located.

(5) Issuance of an operating license by the department authorizes the licensee to accept waste for disposal in certified portions of the disposal area for which a bond was established under section 11523 and, for type II landfills, for which financial assurance was demonstrated under section 11523a. If the construction of a portion of a landfill licensed under this section is not complete at the time of license application, the owner or operator of the landfill shall submit a certification under the seal of a licensed professional engineer verifying that the construction of that portion of the landfill has proceeded according to the approved plans at least 60 days prior to the anticipated date of waste disposal in that portion of the landfill. If the department does not deny the certification within 60 days of receipt, the owner or operator may accept waste for disposal in the certified portion. In the case of a denial, the department shall issue a written statement stating the reasons why the construction or certification is not consistent with this part or rules promulgated under this part or the approved plans.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11517 Plan for program reducing incineration of noncombustible materials and dangerous combustible materials and other hazardous by-products; approval or disapproval; considerations; modifications; revised plan; implementation; operation without approved plan.**

Sec. 11517. (1) Within 9 months after the completion of construction of a municipal solid waste incinerator, the owner or operator of a municipal solid waste incinerator shall submit a plan to the department for a program that, to the extent practicable, reduces the incineration of noncombustible materials and dangerous combustible materials and their hazardous by-products at the incinerator. The department shall approve or disapprove the plan submitted under this subsection within 30 days after receiving it. In reviewing the plan, the department shall consider the current county solid waste management plan, available markets for separated materials, disposal alternatives for the separated materials, and collection practices for handling such separated materials. If the department disapproves a plan, the department shall notify the owner or operator submitting the plan of this fact, and shall provide modifications that, if included, would result in the plan's approval. If the department disapproves a plan, the owner or operator of a municipal solid waste incinerator shall within 30 days after receipt of the department's disapproval submit a revised plan that addresses all of the modifications provided by the department. The department shall approve or disapprove the revised plan within 30 days after receiving it, and approval of the revised plan shall not be unreasonably withheld.

(2) Not later than 6 months after the approval of the plan by the department under subsection (1), the owner or operator shall implement the plan in accordance with the implementation schedule set forth in the plan. The operation of a municipal solid waste incinerator without an approved plan under this section shall subject the owner or operator, or both, to all of the sanctions provided by this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11518 Sanitary landfill; instrument imposing restrictive covenant on land; filing; contents of covenant; authorization; special exemption; construction of part.**

Sec. 11518. (1) At the time a disposal area that is a sanitary landfill is licensed, an instrument that imposes a restrictive covenant upon the land involved shall be executed by all of the owners of the tract of land upon which the landfill is to be located and the department. If the land involved is state owned, the state administrative board shall execute the covenant on behalf of the state. The instrument imposing the restrictive covenant shall be filed for record by the department or a health officer in the office of the register of deeds of the county, or counties, in which the facility is located. The covenant shall state that the land described in the covenant has been or will be used as a landfill and that neither the property owners, their servants, agents, or employees, nor any of their heirs, successors, lessees, or assigns shall engage in filling, grading, excavating, drilling, or mining on the property during the first 50 years following completion of the landfill without authorization of the department. In giving authorization, the department shall consider the original design, type of operation, material deposited, and the stage of decomposition of the fill. Special exemption from this section may be granted by the department if the lands involved are federal lands or if contracts existing between the landowner and the licensee on January 11, 1979 are not renegotiable.

(2) This part does not prohibit the department from conveying, leasing, or permitting the use of state land for a solid waste disposal area or a resource recovery facility as provided by applicable state law.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11519 Specifying reasons for denial of construction permit or operating license; cease and desist order; grounds for order revoking, suspending, or restricting permit or license; contested case hearing; judicial review; inspection; report; copies; violation of part or rules; summary suspension of permit or license.**

Sec. 11519. (1) The department shall specify, in writing, the reasons for denial of a construction permit or an operating license, further specifying those particular sections of this part or rules promulgated under this part that may be violated by granting the application and the manner in which the violation may occur.

(2) The health officer or department may issue a cease and desist order specifying a schedule of closure or remedial action in accordance with this part and rules promulgated under this part or may establish a consent agreement specifying a schedule of closure or remedial action in accordance with this part and rules promulgated under this part to a person who establishes, constructs, conducts, manages, maintains, or operates a disposal area without a permit or license or to a person who holds a permit or license but establishes, constructs, conducts, manages, maintains, or operates a disposal area contrary to an approved solid waste management plan or contrary to the permit or license issued under this part.

(3) The department may issue a final order revoking, suspending, or restricting a permit or license after a contested case hearing as provided in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, if the department finds that the disposal area is not being constructed or operated in accordance with the approved plans, the conditions of a permit or license, this part, or the rules promulgated under this part. A final order issued pursuant to this section is subject to judicial review as provided in Act No. 306 of the Public Acts of 1969. The department or a health officer shall inspect and file a written report not less than 4 times per year for each licensed disposal area. The department or the health officer shall provide the municipality in which the licensed disposal area is located with a copy of each written inspection report if the municipality arranges with the department or the health officer to bear the expense of duplicating and mailing the reports.

(4) The department may issue an order summarily suspending a permit or license if the department determines that a violation of this part or rules promulgated under this part has occurred which, in the department's opinion, constitutes an emergency or poses an imminent risk of injury to the public health or the environment. A determination that a violation poses an imminent risk of injury to the public health shall be made by the department. Summary suspension may be ordered effective on the date specified in the order or upon service of a certified copy of the order on the licensee, whichever is later, and shall remain effective during the proceedings. The proceedings shall be commenced within 7 days of the issuance of the order and shall be promptly determined.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

#### **324.11520 Disposition of fees; special fund; disposition of solid waste on private property.**

Sec. 11520. (1) Fees collected by a health officer under this part shall be deposited with the city or county treasurer, who shall keep the deposits in a special fund designated for use in implementing this part. If there is an ordinance or charter provision that prohibits a health officer from maintaining a special fund, the fees shall be deposited and used in accordance with the ordinance or charter provision. Fees collected by the department under this part shall be credited to the general fund of the state.

(2) This part does not prohibit an individual from disposing of solid waste from the individual's own household upon the individual's own land as long as the disposal does not create a nuisance or hazard to health. Solid waste accumulated as a part of an improvement or the planting of privately owned farmland may be disposed of on the property if the method used is not injurious to human life or property and does not unreasonably interfere with the enjoyment of life or property.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

#### **324.11521 Yard clippings; management; means; temporary accumulation; requirements; composting on farm; qualification as registered composting facility; site at which yard clippings are managed.**

Sec. 11521. (1) Yard clippings shall be managed by 1 of the following means:

- (a) Composted on the property where the yard clippings are generated.
  - (b) Temporarily accumulated under subsection (2).
  - (c) Composted at a composting facility containing not more than 200 cubic yards of yard clippings if decomposition occurs without creating a nuisance.
  - (d) Composted on a farm as described by subsection (3).
  - (e) Composted at site that qualifies as a registered composting facility under subsection (4).
  - (f) Decomposed in a controlled manner using a closed container to create and maintain anaerobic conditions if in compliance with part 55 and otherwise approved by the director under this part.
  - (g) Composted and used as part of normal operations by a municipal solid waste landfill if the composting and use meet all of the following requirements:
    - (i) Take place on property described in the landfill construction permit.
    - (ii) Are described in and consistent with the landfill operation plans.
    - (iii) Are otherwise in compliance with this act.
  - (h) Processed at a processing plant in accordance with this part and the rules promulgated under this part.
  - (i) Disposed of in a landfill or an incinerator, but only if the yard clippings are diseased or infested or are composed of invasive plants, such as garlic mustard, purple loosestrife, or spotted knapweed, that were collected through an eradication or control program, include no more than a de minimis amount of other yard clippings, and are inappropriate to compost.
- (2) A person may temporarily accumulate yard clippings at a site not designed for composting if all of the following requirements are met:
- (a) The accumulation does not create a nuisance or otherwise result in a violation of this act.
  - (b) The yard clippings are not mixed with other compostable materials.
  - (c) No more than 1,000 cubic yards are placed on site unless a greater volume is approved by the department.
  - (d) Yard clippings placed on site on or after April 1 but before December 1 are moved to another location and managed as provided in subsection (1) within 30 days after being placed on site. The director may approve a longer time period based on a demonstration that additional time is necessary.
  - (e) Yard clippings placed on site on or after December 1 but before the next April 1 are moved to another location and managed as provided in subsection (1) by the next April 10 after the yard clippings are placed on site.
  - (f) The owner or operator of the site maintains and makes available to the department records necessary to demonstrate that the requirements of this subsection are met.



(3) A person may compost yard clippings on a farm if composting does not otherwise result in a violation of this act and is done in accordance with generally accepted agricultural and management practices under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474, and if 1 or more of the following apply:

- (a) Only yard clippings generated on the farm are composted.
- (b) There are not more than 5,000 cubic yards of yard clippings on the farm.
- (c) If there are more than 5,000 cubic yards of yard clippings on the farm at any time, all of the following requirements are met:
  - (i) The farm operation accepts yard clippings generated at a location other than the farm only to assist in management of waste material generated by the farm operation.
  - (ii) The farm operation does not accept yard clippings generated at a location other than the farm for monetary or other valuable consideration.
  - (iii) The owner or operator of the farm registers with the department of agriculture on a form provided by the department of agriculture and certifies that the farm operation meets and will continue to meet the requirements of subparagraphs (i) and (ii).

(4) A site qualifies as a registered composting facility if all of the following requirements are met:

(a) The owner or operator of the site registers as a composting facility with the department and reports to the department within 30 days after the end of each state fiscal year the amount of yard clippings and other compostable material composted in the previous state fiscal year. The registration and reporting shall be done on forms provided by the department. The registration shall be accompanied by a fee of \$600.00. The registration is for a term of 3 years. Registration fees collected under this subdivision shall be forwarded to the state treasurer for deposit in the solid waste staff account of the solid waste management fund established in section 11550.

(b) The site is operated in compliance with the following location restrictions:

(i) If the site is in operation on December 1, 2007, the management or storage of yard clippings, compost, and residuals does not expand from its location on that date to an area that is within the following distances from any of the following features:

- (A) 50 feet from a property line.
- (B) 200 feet from a residence.
- (C) 100 feet from a body of surface water, including a lake, stream, or wetland.

(ii) If the site begins operation after December 1, 2007, the management or storage of yard clippings, compost, and residuals occurs in an area that is not in the 100-year floodplain and is at least the following distances from each of the following features:

- (A) 50 feet from a property line.
- (B) 200 feet from a residence.
- (C) 100 feet from a body of surface water, including a lake, stream, or wetland.
- (D) 2,000 feet from a type I or type IIA water supply well.
- (E) 800 feet from a type IIB or type III water supply well.

(F) 500 feet from a church or other house of worship, hospital, nursing home, licensed day care center, or school, other than a home school.

(G) 4 feet above groundwater.

(c) Composting and management of the site occurs in a manner that meets all of the following requirements:

(i) Does not violate this act or create a facility as defined in section 20101.

(ii) Unless approved by the department, does not result in more than 5,000 cubic yards of yard clippings and other compostable material, compost, and residuals present on any acre of property at the site.

(iii) Does not result in an accumulation of yard clippings for a period of over 3 years unless the site has the capacity to compost the yard clippings and the owner or operator of the site can demonstrate, beginning in the third year of operation and each year thereafter, unless a longer time is approved by the director, that the amount of yard clippings and compost that is transferred off-site in a calendar year is not less than 75% by weight or volume, accounting for natural volume reduction, of the amount of yard clippings and compost that was on-site at the beginning of the calendar year.

(iv) Results in finished compost with not more than 1%, by weight, of foreign matter that will remain on a 4 millimeter screen.

(v) If yard clippings are collected in bags other than paper bags, debags the yard clippings by the end of each business day.

(vi) Prevents the pooling of water by maintaining proper slopes and grades.

(vii) Properly manages storm water runoff.

(viii) Does not attract or harbor rodents or other vectors.

(d) The owner or operator maintains, and makes available to the department, all of the following records:

(i) Records identifying the volume of yard clippings and other compostable material accepted by the facility and the volume of yard clippings and other compostable material and of compost transferred off-site each month.

(ii) Records demonstrating that the composting operation is being performed in a manner that prevents nuisances and minimizes anaerobic conditions. Unless other records are approved by the department, these records shall include records of carbon-to-nitrogen ratios, the amount of leaves and the amount of grass in tons or cubic yards, temperature readings, moisture content readings, and lab analysis of finished products.

(5) A site at which yard clippings are managed in accordance with this section, other than a site described in subsection (1)(g), (h) or (i), is not a disposal area, notwithstanding section 11503(5).

(6) Except with respect to subsection (1)(h) and (i), management of yard clippings in accordance with this section is not considered disposal for purposes of section 11538(6).

**History:** Add. 2007, Act 212, Eff. Mar. 26, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11522 Open burning of grass clippings or leaves.**

Sec. 11522. (1) Beginning on March 28, 1995, the open burning of grass clippings or leaves, or both, is prohibited in any municipality having a population of 7,500 or more, unless specifically authorized by local ordinance, which ordinance shall be reported to the department of natural resources within 30 days of enactment.

(2) This section does not allow a county or municipality to permit open burning of grass clippings or leaves, or both, by an ordinance that would otherwise be prohibited under part 55 or rules promulgated under that part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11523 Financial assurance; cash bond; payments; interest; reduction in bond; termination; noncompliance with closure and postclosure monitoring and maintenance requirements; expiration or cancellation notice; effect of bankruptcy action; perpetual care fund.**

Sec. 11523. (1) The department shall not issue a license to operate a disposal area unless the applicant has filed, as a part of the application for a license, evidence of the following financial assurance:

(a) Financial assurance established for a type III landfill or a preexisting unit at a type II landfill and until April 9, 1997, existing and new type II landfills shall be in the form of a bond in an amount equal to \$20,000.00 per acre of licensed landfill within the solid waste boundary. However, the amount of the bond shall not be less than \$20,000.00 or more than \$1,000,000.00. Each bond shall provide assurance for the maintenance of the finished landfill site for a period of 30 years after the landfill or any approved portion is completed. In addition to this bond, a perpetual care fund shall be maintained under section 11525.

(b) Financial assurance for a type II landfill which is an existing unit or a new unit shall be in an amount equal to the cost, in current dollars, of hiring a third party, to conduct closure, postclosure maintenance and monitoring, and if necessary, corrective action. An application for a type II landfill which is an existing unit or new unit shall demonstrate financial assurance in accordance with section 11523a.

(c) Financial assurance established for a solid waste transfer facility, incinerator, processing plant, other solid waste handling or disposal facility, or a combination of these utilized in the disposal of solid waste shall be in the form of a bond in an amount equal to 1/4 of 1% of the construction cost of the facility, but shall not be less than \$4,000.00, and shall be continued in effect for a period of 2 years after the disposal area is closed.

(2) The owner or operator of a landfill may post a cash bond with the department instead of other bonding mechanisms to fulfill the remaining financial assurance requirements of this section. A minimum amount equal to the remaining financial assurance requirement divided by the term of the operating license shall be paid to the department prior to licensure. Subsequent payments to the department shall be made annually in an amount equal to the remaining financial assurance requirement divided by the number of years remaining until the operating license expires, until the required amount is attained. An owner or operator of a disposal area who elects to post cash as bond shall accrue interest on that bond at the annual rate of 6%, to be accrued

quarterly, except that the interest rate payable to an owner or operator shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the owner or operator upon release of the bond by the department. Any interest greater than 6% shall be deposited in the state treasury to the credit of the general fund and shall be appropriated to the department to be used by the department for administration of this part.

(3) An owner or operator of a disposal area that is not a landfill who has accomplished closure in a manner approved by the department and in accordance with this part and the rules promulgated under this part, may request a 50% reduction in the bond during the 2-year period after closure. At the end of the 2-year period, the owner or operator may request that the department terminate the bond. The department shall approve termination of the bond within 60 days of such request provided all waste and waste residues have been removed from the disposal area and that closure is certified.

(4) The department may utilize a bond required under this section for the closure and postclosure monitoring and maintenance of a disposal area if the owner or operator fails to comply with the closure and postclosure monitoring and maintenance requirements of this part and the rules promulgated under this part to the extent necessary to correct such violations following issuance of a notice of violation or other order by the department which alleges violation of this part and rules promulgated under this part and provides 7 days' notice and opportunity for hearing.

(5) Under the terms of a surety bond, letter of credit, or insurance policy, the issuing institution shall notify both the department and the owner or operator at least 120 days before the expiration date or any cancellation of the bond. If the owner or operator does not extend the effective date of the bond, or establish alternate financial assurance within 90 days after receipt of an expiration or cancellation notice by the issuing institution, the department may draw on the bond.

(6) The department shall not issue a construction permit or a new license to operate a disposal area to an applicant that is the subject of a bankruptcy action commenced under title 11 of the United States Code, 11 U.S.C. 101 to 1330, or any other predecessor or successor statute.

(7) A person required under this section to provide financial assurance in the form of a bond for a landfill may request a reduction in the bond based upon the value of the perpetual care fund established under section 11525. A person requesting a bond reduction shall do so on a form consistent with this part as prepared by the department. The department shall grant this request unless there are sufficient grounds for denial and those reasons are provided in writing. The department shall grant or deny a request for a reduction of the bond within 60 days after the request is made. If the department grants a request for a reduced bond, the department shall require a bond in an amount such that for type III landfills, and type II landfills which are preexisting units, the amount of money in the perpetual care fund plus the amount of the reduced bond equals the maximum amount required in a perpetual care fund in section 11525(2).

(8) The department shall release the bond required by this section if the amount in the perpetual care fund exceeds the amount of the financial assurance required under subsection (1).

(9) Prior to closure of a landfill, if money is disbursed from the perpetual care fund, then the department may require a corresponding increase in the amount of bonding required to be provided if necessary to meet the requirement of this section.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11523a Operation of type II landfill.**

Sec. 11523a. (1) Effective April 9, 1997, the department shall not issue a license to operate a type II landfill unless the applicant demonstrates that for any new unit or existing unit at the facility, the combination of the perpetual care fund established under section 11525, bonds, and the financial capability of the applicant as evidenced by a financial test, provides financial assurance in an amount not less than that required by this section. An applicant may utilize a financial test for an amount up to, but not exceeding 70% of the closure, postclosure, and corrective action cost estimate.

(2) An applicant may demonstrate compliance with this section by submitting evidence with a form consistent with this part, as prepared by the department, that the applicant has financial assurance for any existing unit or new unit in an amount equal to or greater than the sum of the following standardized costs:

(a) A standard closure cost estimate. The standard closure cost estimate shall be based upon the sum of the following costs in 1996 dollars, adjusted for inflation and partial closures, if any, as specified in subsections (4) and (5):

(i) A base cost of \$20,000.00 per acre to construct a compacted soil final cover using on-site material.

(ii) A supplemental cost of \$20,000.00 per acre, to install a synthetic cover liner, if required by rules under this part.

(iii) A supplemental cost of \$5,000.00 per acre, if low permeability soil must be transported from off-site to construct the final cover or if a bentonite geocomposite liner is used in lieu of low permeability soil in a composite cover.

(iv) A supplemental cost of \$5,000.00 per acre, to construct a passive gas collection system in the final cover, unless an active gas collection system has been installed at the facility.

(b) A standard postclosure cost estimate. The standard postclosure cost estimate shall be based upon the sum of the following costs, adjusted for inflation as specified in section 11525(2):

(i) A final cover maintenance cost of \$200.00 per acre per year.

(ii) A leachate disposal cost of \$100.00 per acre per year.

(iii) A leachate transportation cost of \$1,000.00 per acre per year, if leachate is required to be transported off-site for treatment.

(iv) A groundwater monitoring cost of \$1,000.00 per monitoring well per year.

(v) A gas monitoring cost of \$100.00 per monitoring point per year, for monitoring points used to detect landfill gas at or beyond the facility property boundary.

(c) The corrective action cost estimate, if any. The corrective action cost estimate shall be a detailed written estimate, in current dollars, of the cost of hiring a third party to perform corrective action in accordance with this part.

(3) In lieu of using some or all of the standardized costs specified in subsection (2) of this section, an applicant may estimate the site specific costs of closure or postclosure maintenance and monitoring. A site specific cost estimate shall be a written estimate, in current dollars, of the cost of hiring a third party to perform the activity. A third party is a party who is neither a parent corporation or a subsidiary of the owner or operator. Site specific cost estimates shall be based on the following:

(a) For closure, the cost to close the largest area of the landfill ever requiring a final cover at any time during the active life, when the extent and manner of its operation would make closure the most expensive, in accordance with the approved closure plan. The closure cost estimate may not incorporate any salvage value that may be realized by the sale of structures, land, equipment, or other assets associated with the facility at the time of final closure.

(b) For postclosure, the cost to conduct postclosure maintenance and monitoring in accordance with the approved postclosure plan for the entire postclosure period.

(4) The owner or operator of a landfill subject to this section shall, during the active life of the landfill and during the postclosure care period, annually adjust the financial assurance cost estimates and corresponding amount of financial assurance for inflation. Cost estimates shall be adjusted for inflation by multiplying the cost estimate by an inflation factor derived from the most recent bureau of reclamation composite index published by the United States department of commerce or another index that is more representative of the costs of closure and postclosure monitoring and maintenance as determined appropriate by the department. The owner or operator shall document the adjustment on a form consistent with this part as prepared by the department and shall place such documentation in the operating record of the facility.

(5) The owner or operator of a landfill subject to this section may request that the department authorize a reduction in the approved cost estimates and corresponding financial assurance for the landfill by submitting a form consistent with this part as prepared by the department certifying completion of any of the following activities:

(a) Partial closure of the landfill. The current closure cost estimate for partially closed portions of a landfill unit may be reduced by 80%, if the maximum waste slope on the unclosed portions of the unit does not exceed 25%. The percentage of the cost estimate reduction approved by the department for the partially closed portion shall be reduced 1% for every 1% increase in the slope of waste over 25% in the active portion. An owner or operator requesting a reduction in financial assurance for partial closure shall enclose with the request a certification under the seal of a licensed professional engineer that certifies both of the following:

(i) A portion of the licensed landfill unit has reached final grades and has had a final cover installed in compliance with the approved closure plan and rules promulgated under this part.

(ii) The maximum slope of waste in the active portion of the landfill unit at the time of partial closure.

(b) Final closure of the landfill. An owner or operator requesting a cost estimate reduction for final closure shall submit a certification under the seal of a licensed professional engineer that closure of that landfill unit has been fully completed in accordance with the approved closure plan for the landfill. Within 60 days of receiving a certification under this subsection, the department shall perform a consistency review of the submitted certification. If that review is approved, the department shall notify the owner or operator that he or

she may reduce the closure estimate by 100%. The department shall provide within 60 days the owner or operator with a detailed written statement of the reasons why the department has determined that closure certification has not been conducted in accordance with this part, the rules promulgated under this part, or an approved closure plan.

(c) Postclosure maintenance and monitoring. The owner or operator of a landfill unit who has completed final closure of the unit may request a reduction in the postclosure cost estimate and corresponding financial assurance for 1 year or more of postclosure maintenance and monitoring if the landfill has been monitored and maintained in accordance with the approved postclosure plan. The department shall, within 60 days of receiving a cost estimate reduction request grant written approval or issue a written denial stating the reason for denial. The department shall grant the request and the owner or operator may reduce the postclosure cost estimate to reflect the number of years remaining in the postclosure period unless the department provided in writing that the owner or operator has not performed the specific tasks consistent with this part, rules promulgated under this part, and an approved plan.

(6) The owner or operator of a landfill subject to this section may request a reduction in the amount of one or more of the financial assurance mechanisms in place. If the combined value of the remaining financial assurance mechanisms equals the required amount under section 11523a, the department shall approve the request.

(7) An owner or operator requesting that the department approve a financial assurance reduction for performance of the activities specified in subsection (5) or due to excess financial assurance specified in subsection (6) shall do so on a form consistent with this part as prepared by the department. The department shall grant written approval or, within 60 days of receiving a financial assurance reduction request, issue a written denial stating the reason for the denial.

**History:** Add. 1996, Act 359, Imd. Eff. July 1, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11523b Trust fund or escrow account.**

Sec. 11523b. (1) The owner or operator of a landfill may establish a trust fund or escrow account to fulfill the requirements of sections 11523 and 11523a. The trust fund or escrow account shall be executed on a form provided by the department.

(2) Payments into a trust fund or escrow account shall be made annually over the term of the first operating license issued after the effective date of this section. The first payment into a trust fund or escrow account shall be made prior to licensure and shall be at least equal to the portion of the financial assurance requirement to be covered by the trust fund or escrow account divided by the term of the operating license. Subsequent payments shall be equal to the remaining financial assurance requirement divided by the number of years remaining until the license expires.

(3) If the owner or operator of a landfill establishes a trust fund or escrow account after having used one or more alternate forms of financial assurance, the initial payment into the trust fund or escrow account shall be at least the amount the fund would contain if the fund were established initially and annual payments made according to subsection (2).

(4) All earnings and interest from a trust fund or escrow account shall be credited to the fund or account. However, the custodian may be compensated for reasonable fees and costs for his or her responsibilities as custodian. The custodian shall ensure the filing of all required tax returns for which the trust fund or escrow account is liable and shall disburse funds from earnings to pay lawfully due taxes owed by the trust fund or escrow account, without permission of the department.

(5) The custodian shall annually, 30 days preceding the anniversary date of establishment of the fund, furnish to the owner or operator and to the department a statement confirming the value of the fund or account as of the end of that month.

(6) The owner or operator may request that the department authorize the release of funds from a trust fund or escrow account. The department shall grant the request if the owner or operator demonstrates that the value of the fund or account exceeds the owner's or operator's financial assurance obligation. A payment or disbursement from the fund or account shall not be made without the prior written approval of the department.

(7) The owner or operator shall receive all interest or earnings from a trust fund or escrow account upon its termination.

(8) For purposes of this section, the term "custodian" means the trustee of a trust fund or escrow agent of an escrow account.



**History:** Add. 1996, Act 359, Imd. Eff. July 1, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

#### **324.11524 Reduction or increase in financial assurance.**

Sec. 11524. A person required under section 11523 to provide financial assurance in the form of a bond or a letter of credit for a landfill may request a reduction in the total amount of financial assurance required upon reapplication for an operating license pursuant to section 11516(2). The department shall grant this request unless there are sufficient grounds for denial and those reasons are provided in writing. The department shall grant or deny a request for a reduction of the financial assurance within 60 days after the request is made. If the department grants a request for reduced financial assurance, the department shall require financial assurance in an amount such that the amount of money in the perpetual care fund plus the amount of the reduced financial assurance equals the amount of the financial assurance required in section 11523 plus an additional 20% of that amount. The department shall release the financial assurance required by section 11523 if the amount in the perpetual care fund exceeds the amount of the financial assurance required under section 11523. Prior to closure of a landfill, if money is disbursed from the perpetual care fund, then the department may require a corresponding increase in the amount of financial assurance required to be provided.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

#### **324.11525 Perpetual care fund.**

Sec. 11525. (1) The owner or operator of a landfill shall establish and maintain a perpetual care fund for a period of 30 years after final closure of the landfill as specified in this section. A perpetual care fund may be established as a trust or an escrow account and may be used to demonstrate financial assurance for type II landfills under section 11523 and section 11523a.

(2) Except as otherwise provided in this section, the owner or operator of a landfill shall deposit into his or her perpetual care fund 75 cents for each ton or portion of a ton or 25 cents for each cubic yard or portion of a cubic yard of solid waste that is disposed of in the landfill after June 17, 1990. The deposits shall be made not less than semiannually until the fund reaches the maximum required fund amount. As of July 1, 1996, the maximum required fund amount is \$1,156,000.00. This amount shall be annually adjusted for inflation and rounded to the nearest thousand. The department shall adjust the maximum required fund amount for inflation annually by multiplying the amount by an inflation factor derived from the most recent bureau of reclamation composite index published by the United States department of commerce or another index more representative of the costs of closure and postclosure monitoring and maintenance as determined appropriate by the department.

(3) The owner or operator of a landfill that is used for the disposal of the following materials shall deposit into the perpetual care fund 7.5 cents for each ton or cubic yard or portion of a ton or cubic yard of the following materials that are disposed of in the landfill after June 17, 1990:

(a) Coal ash, wood ash, or cement kiln dust that is disposed of in a landfill that is used only for the disposal of coal ash, wood ash, or cement kiln dust, or a combination of these materials, or that is permanently segregated in a landfill.

(b) Wastewater treatment sludge or sediments from wood pulp or paper producing industries that is disposed of in a landfill that is used only for the disposal of wastewater treatment sludge and sediments from wood pulp or paper producing industries, or that is permanently segregated in a landfill.

(c) Foundry sand or other material that is approved by the department for use as daily cover at an operating landfill, that is disposed of in a landfill that is used only for the disposal of foundry sand, or that is permanently segregated in a landfill.

(4) The owner or operator of a landfill that is used only for the disposal of a mixture of 2 or more of the materials described in subsection (3)(a) to (c) or in which a mixture of 2 or more of these materials are permanently segregated shall deposit into the perpetual care fund 7.5 cents for each ton or cubic yard or portion of a ton or cubic yard of these materials that are disposed of in the landfill after July 1, 1996.

(5) Money is not required to be deposited into a perpetual care fund for materials that are regulated under part 631.

(6) The owner or operator of a landfill may contribute additional amounts into the perpetual care fund at his or her discretion.

(7) The custodian of a perpetual care fund shall be a bank or other financial institution that has the authority to act as a custodian and whose account operations are regulated and examined by a federal or state agency. Until the perpetual care fund reaches the maximum required fund amount, the custodian of a perpetual care fund shall credit interest and earnings of the perpetual care fund to the perpetual care fund. However, upon the direction of the owner or operator, the custodian may utilize the interest and earnings of the perpetual care fund to pay the solid waste management program administration fee or the surcharge required by section 11525a for the landfill for which the perpetual care fund was established. After the perpetual care fund reaches the maximum required fund amount, interest and earnings shall be distributed as directed by the owner or operator. The agreement governing the operation of the perpetual care fund shall be executed on a form consistent with this part as prepared by the department. The custodian may be compensated from the fund for reasonable fees and costs incurred for his or her responsibilities as custodian. The custodian of a perpetual care fund shall annually make an accounting to the department within 30 days following the close of the state fiscal year.

(8) The custodian of a perpetual care fund shall not disburse any funds to the owner or operator of a landfill for the purposes of the perpetual care fund except upon the prior written approval of the department. However, the custodian shall ensure the filing of all required tax returns for which the perpetual care fund is liable and shall disburse funds to pay lawfully due taxes owed by the perpetual care fund without permission of the department, and may disburse interest and earnings of the perpetual care fund to pay the solid waste management program administration fee or the surcharge required by section 11525a as provided in subsection (7). The owner or operator of the landfill shall provide notice of requests for disbursement and denials and approvals to the custodian of the perpetual care fund. Requests for disbursement from a perpetual care fund shall be submitted not more frequently than semiannually. The owner or operator of a landfill may request disbursement of funds from a perpetual care fund whenever the amount of money in the fund exceeds the maximum required fund amount. The department shall approve the disbursement provided the total amount of financial assurance maintained meets the requirements of sections 11523 and 11523a. As used in this subsection, "maximum required fund amount" means:

(a) For those landfills containing only those materials specified in subsection (3), an amount equal to 1/2 of the maximum required fund amount specified in subsection (2).

(b) For all other landfills, an amount equal to the maximum required fund amount specified in subsection (2).

(9) If the owner or operator of a landfill refuses or fails to conduct closure, postclosure monitoring and maintenance, or corrective action as necessary to protect the public health, safety, or welfare, or the environment or fails to request the disbursement of money from a perpetual care fund when necessary to protect the public health, safety, or welfare, or the environment, or fails to pay the solid waste management program administration fee or the surcharge required under section 11525a, then the department may require the disbursement of money from the perpetual care fund and may expend the money for closure, postclosure monitoring and maintenance, and corrective action, as necessary. The department may assess a perpetual care fund for administrative costs associated with actions taken under this subsection.

(10) Upon approval by the department of a request to terminate financial assurance for a landfill under section 11525b, any money in the perpetual care fund for that landfill shall be disbursed by the custodian to the owner of the landfill unless a contract between the owner and the operator of the landfill provides otherwise.

(11) The owner of a landfill shall provide notice to the custodian of the perpetual care fund for that landfill if there is a change of ownership of the landfill. The custodian shall maintain records of ownership of a landfill during the time in which a perpetual care fund is established.

(12) This section does not relieve an owner or operator of a landfill of any liability that he or she may have under this part or as otherwise provided by law.

(13) This section does not create a cause of action at law or in equity against a custodian of a perpetual care fund other than for errors or omissions related to investments, accountings, disbursements, filings of required tax returns, and maintenance of records required by this section or the applicable perpetual care fund.

(14) As used in this section, "custodian" means the trustee or escrow agent of a perpetual care fund.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 1996, Act 506, Imd. Eff. Jan. 9, 1997;—Am. 2003, Act 153, Eff. Oct. 1, 2003.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11525a Owner or operator of landfill or municipal solid waste incinerator; surcharge; payment; deposit; "captive facility" defined.**

Sec. 11525a.

(1) Until October 1, 2011, the owner or operator of a landfill shall pay a surcharge as follows:

(a) Except as provided in subdivision (b), 7 cents for each cubic yard or portion of a cubic yard of solid waste or municipal solid waste incinerator ash that is disposed of in the landfill during the previous quarter of the state fiscal year.

(b) For type III landfills that are captive facilities, the following annual amounts:

(i) For a captive facility that receives 100,000 or more cubic yards of waste, \$3,000.00.

(ii) For a captive facility that receives 75,000 or more but less than 100,000 cubic yards of waste, \$2,500.00.

(iii) For a captive facility that receives 50,000 or more but less than 75,000 cubic yards of waste, \$2,000.00.

(iv) For a captive facility that receives 25,000 or more but less than 50,000 cubic yards of waste, \$1,000.00.

(v) For a captive facility that receives less than 25,000 cubic yards of waste, \$500.00.

(2) The owner or operator of a landfill or municipal solid waste incinerator shall pay the surcharge under subsection (1)(a) within 30 days after the end of each quarter of the state fiscal year. The owner or operator of a type III landfill that is a captive facility shall pay the surcharge under subsection (1)(b) by January 31 of each year.

(3) The owner or operator of a landfill or municipal solid waste incinerator who is required to pay the surcharge under subsection (1) may pass through and collect the surcharge from any person who generated the solid waste or who arranged for its delivery to the solid waste hauler or transfer facility notwithstanding the provisions of any contract or agreement to the contrary or the absence of any contract or agreement.

(4) Surcharges collected under this section shall be forwarded to the state treasurer for deposit in the solid waste staff account of the solid waste management fund established in section 11550.

(5) As used in this section, "captive facility" means a landfill that accepts for disposal only nonhazardous industrial waste generated only by the owner of the landfill or a nonhazardous industrial waste landfill that is specified in section 11525(3).

**History:** Add. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11525b Continuous financial assurance coverage required; request for termination of requirements.**

Sec. 11525b. (1) The owner or operator of a disposal area shall provide continuous financial assurance coverage until released from these requirements by the department under the provisions of this part.

(2) The owner or operator of a landfill who has completed postclosure maintenance and monitoring of the landfill in accordance with this part, rules promulgated under this part, and approved postclosure plan may request that financial assurance required by sections 11523 and 11523a be terminated. A person requesting termination of bonding and financial assurance shall submit to the department a statement that the landfill has been monitored and maintained in accordance with this part, rules promulgated under this part, and approved postclosure plan for the postclosure period specified in section 11523 and shall certify that the landfill is not subject to corrective action under section 11515. Within 60 days of receiving a statement under this subsection, the department shall perform a consistency review of the submitted statement, and if approved, shall notify the owner or operator that he or she is no longer required to maintain financial assurance, shall return or release all financial assurance mechanisms, and shall notify the custodian of the perpetual care fund that money from the fund shall be disbursed as provided in section 11525(10). The department shall provide within 60 days the owner or operator with a detailed written statement of the reasons why the department has determined that postclosure maintenance and monitoring and corrective action, if any, have not been conducted in accordance with this part, the rules promulgated under this part, or an approved postclosure plan.

**History:** Add. 1996, Act 358, Eff. Oct. 1, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11526 Inspection of solid waste transporting unit; determination; administration; inspections.**

Sec. 11526. (1) The department, a health officer, or a law enforcement officer of competent jurisdiction may inspect a solid waste transporting unit that is being used to transport solid waste along a public road to determine if the solid waste transporting unit is designed, maintained, and operated in a manner to prevent littering or to determine if the owner or operator of the solid waste transporting unit is performing in compliance with this part and the rules promulgated under this part.

(2) In order to protect the public health, safety, and welfare and the environment of this state from items and substances being illegally disposed of in landfills in this state, the department, in conjunction with the department of state police, shall administer this part so as to do all of the following:

(a) Ensure that all disposal areas are in full compliance with this part and the rules promulgated under this part.

(b) Provide for the inspection of each solid waste disposal area for compliance with this part and the rules promulgated under this part at least 4 times per year.

(c) Ensure that all persons disposing of solid waste are doing so in compliance with this part and the rules promulgated under this part.

(3) The department and the department of state police may conduct regular, random inspections of waste being transported for disposal at disposal areas in this state. Inspections under this subsection may be conducted at disposal areas at the end original destination.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 43, Imd. Eff. Mar. 29, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11526a Solid waste generated out of state; acceptance by owner or operator of landfill prohibited; exceptions; disposal capacity.**

Sec. 11526a. (1) Beginning October 1, 2004, in order to protect the public health, safety, and welfare and the environment of this state from the improper disposal of waste that is prohibited from disposal in a landfill, and in recognition that the nature of solid waste collection and transport limits the ability of the state to conduct cost effective inspections to ensure compliance with state law, the owner or operator of a landfill shall not accept for disposal in this state solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of this state unless 1 or more of the following are met:

(a) The solid waste is composed of a uniform type of item, material, or substance, other than municipal solid waste incinerator ash, that meets the requirements for disposal in a landfill under this part and the rules promulgated under this part.

(b) The solid waste was received through a material recovery facility, a transfer station, or other facility that has documented that it has removed from the solid waste being delivered to the landfill those items that are prohibited from disposal in a landfill.

(c) The country, state, province, or local jurisdiction in which the solid waste was generated is approved by the department for inclusion on the list compiled by the department under section 11526b.

(2) Notwithstanding section 11538 or any other provision of this part, if there is sufficient disposal capacity for a county's disposal needs in or within 150 miles of the county, all of the following apply:

(a) The county is not required to identify a site for a new landfill in its solid waste management plan.

(b) An interim siting mechanism shall not become operative in the county unless the county board of commissioners determines otherwise.

(c) The department is not required to issue a construction permit for a new landfill in the county.

**History:** Add. 2004, Act 40, Imd. Eff. Mar. 29, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11526b Compliance with MCL 324.11526b required; notice requirements; compilation of list; documentation.**

Sec. 11526b. (1) Not later than October 1, 2004, the department shall do all of the following:

(a) Notify each state, the country of Canada, and each province in Canada that landfills in this state will not accept for disposal solid waste that does not comply with section 11526a.

(b) Compile a list of countries, states, provinces, and local jurisdictions that prohibit from disposal in a landfill the items prohibited from disposal in a landfill located in this state or that prevent from disposal in a landfill the items prohibited from disposal in a landfill located in this state through enforceable solid waste disposal requirements that are comparable to this part.

(c) Prepare and provide to each landfill in the state a copy of a list of the countries, states, provinces, and local jurisdictions compiled under subdivision (b).

(2) The department shall include a country, state, province, or local jurisdiction on the list described in subsection (1) if the country, state, province, or local jurisdiction, or another person, provides the department with documentation that the country, state, province, or local jurisdiction prohibits from disposal in a landfill the items prohibited from disposal in a landfill located in this state or that it prevents from disposal in a landfill the items prohibited from disposal in a landfill located in this state through enforceable solid waste disposal requirements that are comparable to this part. Such documentation shall include all pertinent statutes, administrative regulations, and ordinances.

**History:** Add. 2004, Act 37, Imd. Eff. Mar. 29, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11526c Order restricting or prohibiting solid waste transportation or disposal in this state.**

Sec. 11526c. (1) The director may issue an order restricting or prohibiting the transportation or disposal in this state of solid waste originating within or outside of this state if both of the following apply:

(a) The director, after consultation with appropriate officials, has determined that the transportation or disposal of the solid waste poses a substantial threat to the public health or safety or to the environment.

(b) The director determines that the restriction or prohibition on the transportation or disposal of the solid waste is necessary to minimize or eliminate the substantial threat to public health or safety or to the environment.

(2) At least 30 days before the director issues an order under subsection (1), the department shall post the proposed order and its effective date on its website with information on how a member of the public can comment on the proposed order and shall provide a copy of the proposed order to the members of the standing committees of the senate and house of representatives that consider legislation pertaining to public health or the environment. Before issuing the order, the director shall consider comments received on the proposed order. The department shall post the final order on its website beginning not later than the final order's effective date. This subsection does not apply in an emergency situation described in subsection (3).

(3) In an emergency situation posing an imminent and substantial threat to public health or safety or to the environment, the director, before issuing an order under subsection (1), shall provide a copy of the proposed order to the members of the standing committees of the senate and house of representatives that consider legislation pertaining to public health or the environment and publicize the proposed order in any manner appropriate to help ensure that interested parties are provided notice of the proposed order and its effective date. The department shall post the final order on its website as soon as practicable.

(4) An order issued pursuant to this section shall expire 60 days after it takes effect, unless the order provides for an earlier expiration date.

(5) Subsections (2) and (3) do not apply to the reissuance of an order if the reissued order takes effect upon the expiration of the identical order it replaces. However, the department shall post the reissued order on its website beginning not later than the reissued order's effective date.

(6) A person may seek judicial review of an order issued under this section as provided in section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(7) The director shall rescind an order issued under this section when the director determines that the threat upon which the order was based no longer exists.

**History:** Add. 2004, Act 36, Imd. Eff. Mar. 29, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11526e Disposal of municipal solid waste generated outside of United States; applicability of subsections (1) and (2).**

Sec. 11526e. (1) Subject to subsection (3), a person shall not deliver for disposal, in a landfill or incinerator



in this state, municipal solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of the United States.

(2) Subject to subsection (3), the owner or operator of a landfill or incinerator in this state shall not accept for disposal municipal solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of the United States.

(3) Subsections (1) and (2) apply notwithstanding any other provision of this part. However, subsections (1) and (2) do not apply unless congress enacts legislation under clause 3 of section 8 of article I of the constitution of the United States authorizing such prohibitions. Subsections (1) and (2) do not apply until 90 days after the effective date of such federal legislation or 90 days after the effective date of the amendatory act that added this section, whichever is later.

**History:** Add. 2006, Act 57, Imd. Eff. Mar. 13, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11527 Delivery of waste to licensed disposal area or solid waste transfer facility; vehicle or container; violation; penalty.**

Sec. 11527. (1) A solid waste hauler transporting solid waste over a public road in this state shall deliver all waste to a disposal area or solid waste transfer facility licensed under this part and shall use only a vehicle or container that does not contribute to littering and that conforms to the rules promulgated by the department.

(2) A solid waste hauler who violates this part or a rule promulgated under this part, or who is responsible for a vehicle that has in part contributed to a violation of this part or a rule promulgated under this part, is subject to a penalty as provided in section 11549.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11527a Website listing materials prohibited from disposal; notice to customers.**

Sec. 11527a. (1) The department shall post on its website a list of materials prohibited from disposal in a landfill under section 11514 and appropriate disposal options for those materials.

(2) A solid waste hauler that disposes of solid waste in a landfill shall annually notify each of its customers of each of the following:

(a) The materials that are prohibited from disposal in a landfill under section 11514.

(b) The appropriate disposal options for those materials as described on the department's website.

(c) The department's website address where the disposal options are described.

**History:** Add. 2004, Act 42, Imd. Eff. Mar. 29, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11528 Solid waste transporting unit; watertight; construction, maintenance, and operation; violation; penalties; ordering unit out of service.**

Sec. 11528. (1) A solid waste transporting unit used for garbage, industrial or domestic sludges, or other moisture laden materials not specifically covered by part 121 shall be watertight and constructed, maintained, and operated to prevent littering. Solid waste transporting units used for hauling other solid waste shall be designed and operated to prevent littering or any other nuisance.

(2) A solid waste hauler who violates this part or the rules promulgated under this part is subject to the penalties provided in this part.

(3) The department, a health officer, or a law enforcement officer may order a solid waste transporting unit out of service if the unit does not satisfy the requirements of this part or the rules promulgated under this part. Continued use of a solid waste transporting unit ordered out of service is a violation of this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11529 Exemptions.**

Sec. 11529. (1) A disposal area that is a solid waste transfer facility is not subject to the construction permit and operating license requirements of this part if either of the following circumstances exists:

(a) The solid waste transfer facility is not designed to accept wastes from vehicles with mechanical compaction devices.

(b) The solid waste transfer facility accepts less than 200 uncompacted cubic yards per day.

(2) A solid waste transfer facility that is exempt from the construction permit and operating license requirements of this part under subsection (1) shall comply with the operating requirements of this part and the rules promulgated under this part.

(3) Except as provided in subsection (5), a disposal area that is an incinerator may, but is not required to, comply with the construction permit and operating license requirements of this part if both of the following conditions are met:

(a) The operation of the incinerator does not result in the exposure of any solid waste to the atmosphere and the elements.

(b) The incinerator has a permit issued under part 55.

(4) A disposal area that is an incinerator that does not comply with the construction permit and operating license requirements of this part as permitted in subsection (3) is subject to the planning provisions of this part and must be included in the county solid waste management plan for the county in which the incinerator is located.

(5) A disposal area that is a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit is not subject to the construction permit requirements of this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11530 Collection center for junk motor vehicles and farm implements; competitive bidding; bonds; “collect” defined.**

Sec. 11530. (1) A municipality or county may establish and operate a collection center for junk motor vehicles and farm implements.

(2) A municipality or county may collect junk motor vehicles and farm implements and dispose of them through its collection center through the process of competitive bidding.

(3) A municipality or county may issue bonds as necessary pursuant to Act No. 342 of the Public Acts of 1969, being sections 141.151 to 141.153 of the Michigan Compiled Laws, to finance the cost of constructing or operating facilities to collect junk motor vehicles or farm implements. The bonds shall be general obligation bonds and shall be backed by the full faith and credit of the municipality or county.

(4) As used in this section, “collect” means to obtain a vehicle pursuant to section 252 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.252 of the Michigan Compiled Laws, or to obtain a vehicle or farm implement and its title pursuant to a transfer from the owner.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11531 Solid waste removal; frequency; disposal; ordinance.**

Sec. 11531. (1) A municipality or county shall assure that all solid waste is removed from the site of generation frequently enough to protect the public health, and is delivered to licensed disposal areas, except waste that is permitted by state law or rules promulgated by the department to be disposed of at the site of generation.

(2) An ordinance enacted before February 8, 1988 by a county or municipality incidental to the financing of a publicly owned disposal area or areas under construction that directs that all or part of the solid waste generated in that county or municipality be directed to the disposal area or areas is an acceptable means of compliance with subsection (1), notwithstanding that the ordinance, in the case of a county, has not been approved by the governor. This subsection applies only to ordinances adopted by the governing body of a county or municipality before February 8, 1988, and does not validate or invalidate an ordinance adopted after February 8, 1988 as an acceptable means of compliance with subsection (1).

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11532 Impact fees; agreement; collection, payment, and disposition; reduction; use of revenue; trust fund; board of trustees; membership and terms; expenditures from trust fund.**

Sec. 11532. (1) Except as provided in subsection (3), a municipality may impose an impact fee of not more than 10 cents per cubic yard on solid waste that is disposed of in a landfill located within the municipality that is utilized by the public and utilized to dispose of solid waste collected from 2 or more persons. However, if the landfill is located within a village, the impact fee provided for in this subsection shall be imposed by the township in agreement with the village. The impact fee shall be assessed uniformly on all wastes accepted for disposal.

(2) Except as provided in subsection (3), a municipality may impose an impact fee of not more than 10 cents per cubic yard on municipal solid waste incinerator ash that is disposed of in a landfill located within the municipality that is utilized to dispose of municipal solid waste incinerator ash. However, if the landfill is located within a village, the impact fee provided for in this subsection shall be imposed by the township in agreement with the village.

(3) A municipality may enter into an agreement with the owner or operator of a landfill to establish a higher impact fee than those provided for in subsections (1) and (2).

(4) The impact fees imposed under this section shall be collected by the owner or operator of a landfill and shall be paid to the municipality quarterly by the thirtieth day after the end of each calendar quarter. However, the impact fees allowed to be assessed to each landfill under this section shall be reduced by any amount of revenue paid to or available to the municipality from the landfill under the terms of any preexisting agreements, including, but not limited to, contracts, special use permit conditions, court settlement agreement conditions, and trusts.

(5) Unless a trust fund is established by a municipality pursuant to subsection (6), the revenue collected by a municipality under subsections (1) and (2) shall be deposited in its general fund to be used for any purpose that promotes the public health, safety, or welfare of the citizens of the municipality. However, revenue collected pursuant to this section shall not be used to bring or support a lawsuit or other legal action against an owner or operator of a landfill who is collecting an impact fee pursuant to subsection (4) unless the owner or operator of the landfill has instituted a lawsuit or other legal action against the municipality.

(6) The municipality may establish a trust fund to receive revenue collected pursuant to this section. The trust fund shall be administered by a board of trustees. The board of trustees shall consist of the following members:

(a) The chief elected official of the municipality creating the trust fund.

(b) An individual from the municipality appointed by the governing board of the municipality.

(c) An individual approved by the owners or operators of the landfills within the municipality and appointed by the governing board of the municipality.

(7) Individuals appointed to serve on the board of trustees under subsection (6)(b) and (c) shall serve for terms of 2 years.

(8) Money in the trust fund may be expended, pursuant to a majority vote of the board of trustees, for any purpose that promotes the public health, safety, or welfare of the citizens of the municipality. However, revenue collected pursuant to this section shall not be used to bring or support a lawsuit or other legal action against an owner or operator of a landfill who is collecting an impact fee pursuant to subsection (4) unless the owner or operator of the landfill has instituted a lawsuit or other legal action against the municipality.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11533 Initial solid waste management plan; contents; submission; review and update; amendment; scope of plan; minimum compliance; consultation with regional planning agency; filing, form, and contents of notice of intent; effect of failure to file notice of intent; vote; preparation of plan by regional solid waste management planning agency or by department; progress report.**

Sec. 11533. (1) Each solid waste management plan shall include an enforceable program and process to

assure that the nonhazardous solid waste generated or to be generated in the planning area for a period of 10 years or more is collected and recovered, processed, or disposed of at disposal areas that comply with state law and rules promulgated by the department governing location, design, and operation of the disposal areas. Each solid waste management plan may include an enforceable program and process to assure that only items authorized for disposal in a disposal area under this part and the rules promulgated under this part are disposed of in the disposal area.

(2) An initial solid waste management plan shall be prepared and approved under this section and shall be submitted to the director not later than January 5, 1984. Following submittal of the initial plan, the solid waste management plan shall be reviewed and updated every 5 years. An updated solid waste management plan and an amendment to a solid waste management plan shall be prepared and approved as provided in this section and sections 11534, 11535, 11536, 11537, and 11537a. The solid waste management plan shall encompass all municipalities within the county. The solid waste management plan shall at a minimum comply with the requirements of sections 11537a and 11538. The solid waste management plan shall take into consideration solid waste management plans in contiguous counties and existing local approved solid waste management plans as they relate to the county's needs. At a minimum, a county preparing a solid waste management plan shall consult with the regional planning agency from the beginning to the completion of the plan.

(3) Not later than July 1, 1981, each county shall file with the department and with each municipality within the county on a form provided by the department, a notice of intent, indicating the county's intent to prepare a solid waste management plan or to upgrade an existing solid waste management plan. The notice shall identify the designated agency which shall be responsible for preparing the solid waste management plan.

(4) If the county fails to file a notice of intent with the department within the prescribed time, the department immediately shall notify each municipality within the county and shall request those municipalities to prepare a solid waste management plan for the county and shall convene a meeting to discuss the plan preparation. Within 4 months following notification by the department, the municipalities shall decide by a majority vote of the municipalities in the county whether or not to file a notice of intent to prepare the solid waste management plan. Each municipality in the county shall have 1 vote. If a majority does not agree, then a notice of intent shall not be filed. The notice shall identify the designated agency which is responsible for preparing the solid waste management plan.

(5) If the municipalities fail to file a notice of intent to prepare a solid waste management plan with the department within the prescribed time, the department shall request the appropriate regional solid waste management planning agency to prepare the solid waste management plan. The regional solid waste management planning agency shall respond within 90 days after the date of the request.

(6) If the regional solid waste management planning agency declines to prepare a solid waste management plan, the department shall prepare a solid waste management plan for the county and that plan shall be final.

(7) A solid waste management planning agency, upon request of the department, shall submit a progress report in preparing its solid waste management plan.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 44, Imd. Eff. Mar. 29, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11534 Planning committee; purpose; appointment, qualifications, and terms of members; approval of appointment; reappointment; vacancy; removal; chairperson; procedures.**

Sec. 11534. (1) The county executive of a charter county that elects a county executive and that chooses to prepare a solid waste management plan under section 11533 or the county board of commissioners in all other counties choosing to prepare an initial solid waste management plan under section 11533, or the municipalities preparing an initial solid waste management plan under section 11533(4), shall appoint a planning committee to assist the agency designated to prepare the plan under section 11533. If the county charter provides procedures for approval by the county board of commissioners of appointments by the county executive, an appointment under this subsection shall be subject to that approval. A planning committee appointed pursuant to this subsection shall be appointed for terms of 2 years. A planning committee appointed pursuant to this subsection may be reappointed for the purpose of completing the preparation of the initial solid waste management plan or overseeing the implementation of the initial plan. Reappointed members of a planning committee shall serve for terms not to exceed 2 years as determined by the appointing authority. An initial solid waste management plan shall only be approved by a majority of the

members appointed and serving.

(2) A planning committee appointed pursuant to this section shall consist of 14 members. Of the members appointed, 4 shall represent the solid waste management industry, 2 shall represent environmental interest groups, 1 shall represent county government, 1 shall represent city government, 1 shall represent township government, 1 shall represent the regional solid waste planning agency, 1 shall represent industrial waste generators, and 3 shall represent the general public. A member appointed to represent a county, city, or township government shall be an elected official of that government or the designee of that elected official. Vacancies shall be filled in the same manner as the original appointments. A member may be removed for nonperformance of duty.

(3) A planning committee appointed pursuant to this section shall annually elect a chairperson and shall establish procedures for conducting the committee's activities and for reviewing the matters to be considered by the committee.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11535 County or regional solid waste management planning agency; duties.**

Sec. 11535. A county or regional solid waste management planning agency preparing a solid waste management plan shall do all of the following:

(a) Solicit the advice of and consult periodically during the preparation of the plan with the municipalities, appropriate organizations, and the private sector in the county under section 11538(1) and solicit the advice of and consult with the appropriate county or regional solid waste management planning agency and adjacent counties and municipalities in adjacent counties which may be significantly affected by the solid waste management plan for a county.

(b) If a planning committee has been appointed under section 11534, prepare the plan with the advice, consultation, and assistance of the planning committee.

(c) Notify by letter the chief elected official of each municipality within the county and any other person within the county so requesting, not less than 10 days before each public meeting of the planning agency designated by the county, if that planning agency plans to discuss the county plan. The letter shall indicate as precisely as possible the subject matter being discussed.

(d) Submit for review a copy of the proposed county or regional solid waste management plan to the department, to each municipality within the affected county, and to adjacent counties and municipalities that may be affected by the plan or that have requested the opportunity to review the plan. The county plan shall be submitted for review to the designated regional solid waste management planning agency for that county. Reviewing agencies shall be allowed an opportunity of not less than 3 months to review and comment on the plan before adoption of the plan by the county or a designated regional solid waste management planning agency. The comments of a reviewing agency shall be submitted with the plan to the county board of commissioners or to the regional solid waste management planning agency.

(e) Publish a notice, at the time the plan is submitted for review under subdivision (d), of the availability of the plan for inspection or copying, at cost, by an interested person.

(f) Conduct a public hearing on the proposed county solid waste management plan before formal adoption. A notice shall be published not less than 30 days before a hearing in a newspaper having a major circulation within the county. The notice shall indicate a location where copies of the plan are available for public inspection and shall indicate the time and place of the public hearing.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11536 Request by municipality to be included in plan of adjacent county; approval by resolution; appeal; final decision; formal action on plan; return of plan with statement of objections; review and recommendations; approval by governing bodies; preparation of final plan by department.**

Sec. 11536. (1) A municipality located in 2 counties or adjacent to a municipality located in another county may request to be included in the adjacent county's plan. Before the municipality may be included, the request shall be approved by a resolution of the county boards of commissioners of the counties involved. A



municipality may appeal to the department a decision to exclude it from an adjacent county's plan. If there is an appeal, the department shall issue a decision within 45 days. The decision of the department is final.

(2) Except as provided in subsection (3), the county board of commissioners shall formally act on the plan following the public hearing required by section 11535(f).

(3) If a planning committee has been appointed by the county board of commissioners under section 11534(1), the county board of commissioners, or if a plan is prepared under section 11533(4), the municipalities in the county who voted in favor of filing a notice of intent to prepare a county solid waste management plan, shall take formal action on the plan after the completion of public hearings and only after the plan has been approved by a majority of the planning committee as provided in section 11534(1). If the county board of commissioners, or, if a plan is prepared under section 11533(4), a majority of the municipalities in the county who voted in favor of filing a notice of intent to prepare a county solid waste management plan, does or do not approve the plan as submitted, the plan shall be returned to the planning committee along with a statement of objections to the plan. Within 30 days after receipt, the planning committee shall review the objections and shall return the plan with its recommendations.

(4) Following approval the county plan shall be approved by the governing bodies of not less than 67% of the municipalities within each respective county before the plan may take effect.

(5) A county plan prepared by a regional solid waste management planning agency shall be approved by the governing bodies of not less than 67% of the municipalities within each respective county before the plan may take effect.

(6) If, after the plan has been adopted, the governing bodies of not less than 67% of the municipalities have not approved the plan, the department shall prepare a plan for the county, including those municipalities that did not approve the county plan. A plan prepared by the department shall be final.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11537 Approval or disapproval of plan by department; time; minimum requirements; periodic review; revisions or corrections; withdrawal of approval; timetable or schedule for compliance.**

Sec. 11537. (1) The department shall, within 6 months after a plan has been submitted for approval, approve or disapprove the plan. An approved plan shall at a minimum meet the requirements set forth in section 11538(1).

(2) The department shall review an approved plan periodically and determine if revisions or corrections are necessary to bring the plan into compliance with this part. The department, after notice and opportunity for a public hearing held pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, may withdraw approval of the plan. If the department withdraws approval of a county plan, the department shall establish a timetable or schedule for compliance with this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11537a Use of siting mechanisms to site capacity.**

Sec. 11537a. Beginning on June 9, 1994 a county that has a solid waste management plan that provides for siting of disposal areas to fulfill a 20-year capacity need through use of a siting mechanism, is only required to use its siting mechanisms to site capacity to meet a 10-year capacity need. If any county is able to demonstrate to the department that it has at least 66 months of available capacity, that county may refuse to utilize its siting mechanism until the county is no longer able to demonstrate 66 months of capacity or until the county amends its plan in accordance with this part to provide for the annual certification process described in section 11538.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11538 Rules for development, form, and submission of initial solid waste management plans; requirements; identification of specific sites; calculation of disposal need requirements; interim siting mechanism; annual certification process; new certification; disposal area serving disposal needs of another county, state, or country; compliance as condition to disposing of, storing, or transporting solid waste; provisions or practices in conflict with part.**

Sec. 11538. (1) Not later than September 11, 1979, the director shall promulgate rules for the development, form, and submission of initial solid waste management plans. The rules shall require all of the following:

(a) The establishment of goals and objectives for prevention of adverse effects on the public health and on the environment resulting from improper solid waste collection, processing, or disposal including protection of surface and groundwater quality, air quality, and the land.

(b) An evaluation of waste problems by type and volume, including residential and commercial solid waste, hazardous waste, industrial sludges, pretreatment residues, municipal sewage sludge, air pollution control residue, and other wastes from industrial or municipal sources.

(c) An evaluation and selection of technically and economically feasible solid waste management options, which may include sanitary landfill, resource recovery systems, resource conservation, or a combination of options.

(d) An inventory and description of all existing facilities where solid waste is being treated, processed, or disposed of, including a summary of the deficiencies, if any, of the facilities in meeting current solid waste management needs.

(e) The encouragement and documentation as part of the solid waste management plan, of all opportunities for participation and involvement of the public, all affected agencies and parties, and the private sector.

(f) That the solid waste management plan contain enforceable mechanisms for implementing the plan, including identification of the municipalities within the county responsible for the enforcement and may contain a mechanism for the county and those municipalities to assist the department and the state police in implementing and conducting the inspection program established in section 11526(2) and (3). This subdivision does not preclude the private sector's participation in providing solid waste management services consistent with the solid waste management plan for the county.

(g) Current and projected population densities of each county and identification of population centers and centers of solid waste generation, including industrial wastes.

(h) That the solid waste management plan area has, and will have during the plan period, access to a sufficient amount of available and suitable land, accessible to transportation media, to accommodate the development and operation of solid waste disposal areas, or resource recovery facilities provided for in the plan.

(i) That the solid waste disposal areas or resource recovery facilities provided for in the solid waste management plan are capable of being developed and operated in compliance with state law and rules of the department pertaining to protection of the public health and the environment, considering the available land in the plan area, and the technical feasibility of, and economic costs associated with, the facilities.

(j) A timetable or schedule for implementing the solid waste management plan.

(2) Each solid waste management plan shall identify specific sites for solid waste disposal areas for a 5-year period after approval of a plan or plan update. In calculating disposal need requirements to measure compliance with this section, only those existing waste stream volume reduction levels achieved through source reduction, reuse, composting, recycling, or incineration, or any combination of these reduction devices, that can currently be demonstrated or that can be reasonably expected to be achieved through currently active implementation efforts for proposed volume reduction projects, may be assumed by the planning entity. In addition, if the solid waste management plan does not also identify specific sites for solid waste disposal areas for the remaining portion of the entire planning period required by this part after approval of a plan or plan update, the solid waste management plan shall include an interim siting mechanism and an annual certification process as described in subsections (3) and (4). In calculating the capacity of identified disposal areas to determine if disposal needs are met for the entire required planning period, full achievement of the solid waste management plan's volume reduction goals may be assumed by the planning entity if the plan identifies a detailed programmatic approach to achieving these goals. If a siting mechanism is not included, and disposal capacity falls to less than 5 years of capacity, a county shall amend the solid waste management plan for that county to resolve the shortfall.

(3) An interim siting mechanism shall include both a process and a set of minimum siting criteria, both of which are not subject to interpretation or discretionary acts by the planning entity, and which if met by an applicant submitting a disposal area proposal, will guarantee a finding of consistency with the plan. The

interim siting mechanism shall be operative upon the call of the board of commissioners or shall automatically be operative whenever the annual certification process shows that available disposal capacity will provide for less than 66 months of disposal needs. In the latter event, applications for a finding of consistency from the proposers of disposal area capacity will be received by the planning agency commencing on January 1 following completion of the annual certification process. Once operative, an interim siting mechanism will remain operative for at least 90 days or until more than 66 months of disposal capacity is once again available, either by the approval of a request for consistency or by the adoption of a new annual certification process which concludes that more than 66 months of disposal capacity is available.

(4) An annual certification process shall be concluded by June 30 of each year, commencing on the first June 30 which is more than 12 months after the department's approval of the solid waste management plan or plan update. The certification process will examine the remaining disposal area capacity available for solid wastes generated within the planning area. In calculating disposal need requirements to measure compliance with this section, only those existing waste stream volume reduction levels achieved through source reduction, reuse, composting, recycling, or incineration, or any combination of these reduction devices, that can currently be demonstrated or that can be reasonably expected to be achieved through currently active implementation efforts for proposed volume reduction projects, may be assumed. The annual certification of disposal capacity shall be approved by the board of commissioners. Failure to approve an annual certification by June 30 is equivalent to a finding that less than a sufficient amount of capacity is available and the interim siting mechanism will then be operative on the first day of the following January. As part of the department's responsibility to act on construction permit applications, the department has final decision authority to approve or disapprove capacity certifications and to determine consistency of a proposed disposal area with the solid waste management plan.

(5) A board of commissioners may adopt a new certification of disposal capacity at any time. A new certification of disposal capacity shall supersede all previous certifications, and become effective 30 days after adoption by the board of commissioners and remain in effect until subsequent certifications are adopted.

(6) In order for a disposal area to serve the disposal needs of another county, state, or country, the service, including the disposal of municipal solid waste incinerator ash, must be explicitly authorized in the approved solid waste management plan of the receiving county. With regard to intercounty service within Michigan, the service must also be explicitly authorized in the solid waste management plan of the exporting county.

(7) A person shall not dispose of, store, or transport solid waste in this state unless the person complies with the requirements of this part.

(8) An ordinance, law, rule, regulation, policy, or practice of a municipality, county, or governmental authority created by statute, which prohibits or regulates the location or development of a solid waste disposal area, and which is not part of or not consistent with the approved solid waste management plan for the county, shall be considered in conflict with this part and shall not be enforceable.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 44, Imd. Eff. Mar. 29, 2004.

**Constitutionality:** US Supreme Court held that MCL 299.413a and 299.430(2) prohibiting private landfill operators from accepting out-of-county solid waste, unless authorized by county's solid waste management plan, are unconstitutional as a violation of the Commerce Clause. Fort Gratiot Landfill v Mich Dept of Nat Res, 504 US 353; 112 S Ct 2019; 119 L Ed2d 139 (1992).

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**Administrative rules:** R 299.4101 et seq. of the Michigan Administrative Code.

### **324.11539 Plan update; approval; conditions; rules.**

Sec. 11539. (1) The director shall not approve a plan update unless:

(a) The plan contains an analysis or evaluation of the best available information applicable to the plan area in regard to recyclable materials and all of the following:

(i) The kind and volume of material in the plan area's waste stream that may be recycled or composted.

(ii) How various factors do or may affect a recycling and composting program in the plan area. Factors shall include an evaluation of the existing solid waste collection system; materials market; transportation networks; local composting and recycling support groups, or both; institutional arrangements; the population in the plan area; and other pertinent factors.

(iii) An identification of impediments to implementing a recycling and composting program and recommended strategies for removing or minimizing impediments.

(iv) How recycling and composting and other processing or disposal methods could complement each other and an examination of the feasibility of excluding site separated material and source separated material from other processing or disposal methods.

(v) Identification and quantification of environmental, economic, and other benefits that could result from the implementation of a recycling and composting program.

(vi) The feasibility of source separation of materials that contain potentially hazardous components at disposal areas. This subparagraph applies only to plan updates that are due after January 31, 1989.

(b) The plan either provides for recycling and composting recyclable materials from the plan area's waste stream or establishes that recycling and composting are not necessary or feasible or is only necessary or feasible to a limited extent.

(c) A plan that proposes a recycling or composting program, or both, details the major features of that program, including all of the following:

(i) The kinds and volumes of recyclable materials that will be recycled or composted.

(ii) Collection methods.

(iii) Measures that will ensure collection such as ordinances or cooperative arrangements, or both.

(iv) Ordinances or regulations affecting the program.

(v) The role of counties and municipalities in implementing the plan.

(vi) The involvement of existing recycling interests, solid waste haulers, and the community.

(vii) Anticipated costs.

(viii) On-going program financing.

(ix) Equipment selection.

(x) Public and private sector involvement.

(xi) Site availability and selection.

(xii) Operating parameters such as pH and heat range.

(d) The plan includes an evaluation of how the planning entity is meeting the state's waste reduction and recycling goals as established pursuant to section 11541(4).

(2) The director may promulgate rules as may be necessary to implement this section.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**Administrative rules:** R 299.4101 et seq. of the Michigan Administrative Code.

### **324.11539a Plan update; submission to legislature; standard format.**

Sec. 11539a. (1) The department shall prepare a proposed standard format for the submittal of updates to solid waste management plans. This proposed standard format shall be submitted to the standing committees of the legislature that address issues primarily pertaining to natural resources and the environment by November 1, 1994 for a 30-day review and comment period. Following this 30-day period, the department shall finalize the standard format and provide a copy of the standard format to each planning entity in the state that the department knows will be preparing an update to a solid waste management plan. The standard format shall be submitted to planning entities by January 1, 1995. Additionally, the department shall provide the standard format to any other person upon request.

(2) Notwithstanding any other provision of this part, the department shall not require planning entities to begin the process for updating solid waste management plans prior to January 1, 1995.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11540 Rules; sanitary design and operational standards.**

Sec. 11540. Not later than September 11, 1979, the department shall submit to the legislature rules that contain sanitary design and operational standards for solid waste transporting units and disposal areas and otherwise implement this part. The rules shall include standards for hydrogeologic investigations; monitoring; liner materials; leachate collection and treatment, if applicable; groundwater separation distances; environmental assessments; methane gas control; soil erosion; sedimentation control; groundwater and surface water quality; noise and air pollution; and the use of floodplains and wetlands.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11541 State solid waste management plan; contents; duties of department.**

Sec. 11541. (1) The state solid waste management plan shall consist of the state solid waste plan and all county plans approved or prepared by the department.

(2) The department shall consult and assist in the preparation and implementation of the county solid waste management plans.

(3) The department may undertake or contract for studies or reports necessary or useful in the preparation of the state solid waste management plan.

(4) The department shall promote policies that encourage resource recovery and establishment of waste-to-energy facilities.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11542 Municipal solid waste incinerator ash; disposal.**

Sec. 11542. (1) Except as provided in subsection (5), municipal solid waste incinerator ash shall be disposed of in 1 of the following:

(a) A landfill that meets all of the following requirements:

(i) The landfill is in compliance with this part and the rules promulgated under this part.

(ii) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(iii) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A synthetic liner at least 60 mils thick.

(C) A compacted clay liner of 5 feet or more with a maximum hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second.

(D) A leak detection and leachate collection system.

(E) A compacted clay liner at least 3 feet thick with a maximum hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second or a synthetic liner at least 40 mils thick.

(b) A landfill that meets all of the following requirements:

(i) The landfill is in compliance with this part and the rules promulgated under this part.

(ii) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(iii) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A composite liner, as defined in R 299.4102 of the Michigan administrative code.

(C) A leak detection and leachate collection system.

(D) A second composite liner.

(iv) If contaminants that may threaten the public health, safety, or welfare, or the environment are found in the leachate collection system described in subparagraph (iii)(C), the owner or operator of the landfill shall determine the source and nature of the contaminants and make repairs, to the extent practicable, that will prevent the contaminants from entering the leachate collection system. If the department determines that the source of the contaminants is caused by a design failure of the landfill, the department, notwithstanding an approved construction permit or operating license, may require landfill cells at that landfill that will be used for the disposal of municipal solid waste incinerator ash, which are under construction or will be constructed in the future at the landfill, to be constructed in conformance with improved design standards approved by the department. However, this subparagraph does not require the removal of liners or leak detection and leachate collection systems that are already in place in a landfill cell under construction.

(c) A landfill that is a monitorable unit, as defined in R 299.4104 of the Michigan administrative code, and that meets all of the following requirements:

(i) The landfill is in compliance with this part and the rules promulgated under this part.

(ii) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(iii) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A synthetic liner at least 60 mils thick.



(C) Immediately below the synthetic liner, either 2 feet of compacted clay with a maximum hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second or a bentonite geocomposite liner, as specified in R 299.4914 of the Michigan administrative code.

(D) At least 10 feet of either natural or compacted clay with a maximum hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second, or equivalent.

(d) A landfill with a design approved by the department that will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the design requirements of subdivisions (a) to (c).

(e) A type II landfill, as defined in R 299.4105 of the Michigan administrative code, if both of the following conditions apply:

(i) The ash was generated by a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit.

(ii) The ash from any individual municipal solid waste incinerator is disposed of pursuant to this subdivision for a period not to exceed 60 days.

(2) Except as provided in subsection (3), a landfill that is constructed pursuant to the design described in subsection (1) shall be capped following its closure by all of the following in descending order:

(a) Six inches of top soil with a vegetative cover.

(b) Two feet of soil to protect against animal burrowing, temperature, erosion, and rooted vegetation.

(c) An infiltration collection system.

(d) A synthetic liner at least 30 mils thick.

(e) Two feet of compacted clay with a maximum hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second.

(3) A landfill that receives municipal solid waste incinerator ash under this section may be capped with a design approved by the department that will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the design requirements of subsection (2).

(4) If leachate is collected from a landfill under this section, the leachate shall be monitored and tested in accordance with this part and the rules promulgated under this part.

(5) As an alternative to disposal described in subsection (1), the owner or operator of a municipal solid waste incinerator may process municipal solid waste incinerator ash through mechanical or chemical methods, or both, to substantially diminish the toxicity of the ash or its constituents or limit the leachability of the ash or its constituents to minimize threats to human health and the environment, if processing is performed on the site of the municipal solid waste incinerator or at the site of a landfill described in subsection (1), if the process has been approved by the department as provided by rule, and if the ash is tested after processing in accordance with a protocol approved by the department as provided by rule. The department shall approve the process and testing protocol under this subsection only if the process and testing protocol will protect human health and the environment. In making this determination, the department shall consider all potential pathways of human and environmental exposure, including both short-term and long-term, to constituents of the ash that may be released during the reuse or recycling of the ash. The department shall consider requiring methods to determine the leaching, total chemical analysis, respirability, and toxicity of reused or recycled ash. A leaching procedure shall include testing under both acidic and native conditions. If municipal solid waste incinerator ash is processed in accordance with the requirements of this subsection and the processed ash satisfies the testing protocol approved by the department as provided by rule, the ash may be disposed of in a municipal solid waste landfill, as defined by R 299.4104 of the Michigan administrative code, licensed under this part or may be used in any manner approved by the department. If municipal solid waste incinerator ash is processed as provided in this subsection, but does not satisfy the testing protocol approved by the department as provided by rule, the ash shall be disposed of in accordance with subsection (1).

(6) The disposal of municipal solid waste incinerator ash within a landfill that is in compliance with subsection (1) does not constitute a new proposal for which a new construction permit is required under section 11510, if a construction permit has previously been issued under section 11509 for the landfill and the owner or operator of the landfill submits 6 copies of an operating license amendment application to the department for approval pursuant to part 13. The operating license amendment application shall include revised plans and specifications for all facility modifications including a leachate disposal plan, an erosion control plan, and a dust control plan which shall be part of the operating license amendment. The dust control plan shall contain sufficient detail to ensure that dust emissions are controlled by available control technologies that reduce dust emissions by a reasonably achievable amount to the extent necessary to protect human health and the environment. The dust control plan shall provide for the ash to be wet during all times that the ash is exposed to the atmosphere at the landfill or otherwise to be covered by daily cover material; for dust emissions to be controlled during dumping, grading, loading, and bulk transporting of the ash at the

landfill; and for dust emissions from access roads within the landfill to be controlled. With the exception of a landfill that is in existence on June 12, 1989 that the department determines is otherwise in compliance with this section, the owner or operator of the landfill shall obtain the operating license amendment prior to initiating construction. Prior to operation, the owner or operator of a landfill shall submit to the department certification from a licensed professional engineer that the landfill has been constructed in accordance with the approved plan and specifications. At the time the copies are submitted to the department, the owner or operator of the landfill shall send a copy of the operating license amendment application to the municipality where the landfill is located. At least 30 days prior to making a final decision on the operating license amendment, the department shall hold at least 1 public meeting in the vicinity of the landfill to receive public comments. Prior to a public meeting, the department shall publish notice of the meeting in a newspaper serving the local area.

(7) The owner or operator of a municipal solid waste incinerator or a disposal area that receives municipal solid waste incinerator ash shall allow the department access to the facility for the purpose of supervising the collection of samples or obtaining samples of ash to test or to monitor air quality at the facility.

(8) As used in subsection (1), "landfill" means a landfill or a specific portion of a landfill.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

#### **324.11543 Municipal solid waste incinerator ash; transportation.**

Sec. 11543. (1) If municipal solid waste incinerator ash is transported, it shall be transported in compliance with section 720 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.720 of the Michigan Compiled Laws.

(2) If municipal solid waste incinerator ash is transported by rail, it shall be transported in covered, leakproof railroad cars.

(3) The outside of all vehicles and accessory equipment used to transport municipal solid waste incinerator ash shall be kept free of the ash.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

#### **324.11544 List of laboratories capable of performing test provided for in MCL 324.11542; compilation; publication; definitive testing; fraudulent or careless testing.**

Sec. 11544. (1) The department shall compile a list of approved laboratories that are capable of performing the test provided for in section 11542.

(2) The department shall publish the list compiled under subsection (1) on or before July 1, 1989, and shall after that date make the list available to any person upon request.

(3) Except as provided in subsection (4), a test conducted by an approved laboratory from the list compiled under subsection (1) is definitive for purposes of this part.

(4) If the department has reason to believe that test results provided by an approved laboratory are fraudulent or that a test was carelessly performed, the department may conduct its own test or may have an additional test performed at the department's expense.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

#### **324.11545 Incineration of used oil prohibited; "oil" defined.**

Sec. 11545. Beginning June 21, 1993, a municipal solid waste incinerator shall not incinerate used oil. As used in this section, used oil has the meaning ascribed to this term in part 167.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11546 Action for appropriate relief; penalties for violation or noncompliance; restoration; return; civil action.**

Sec. 11546. (1) The department or a health officer may request that the attorney general bring an action in the name of the people of the state, or a municipality or county may bring an action based on facts arising within its boundaries, for any appropriate relief, including injunctive relief, for a violation of this part or rules promulgated under this part.

(2) In addition to any other relief provided by this section, the court may impose on any person who violates any provision of this part or rules promulgated under this part or who fails to comply with any permit, license, or final order issued pursuant to this part a civil fine as follows:

(a) Except as provided in subdivision (b), a civil fine of not more than \$10,000.00 for each day of violation.

(b) For a second or subsequent violation, a civil fine of not more than \$25,000.00 for each day of violation.

(3) In addition to any other relief provided by this section, the court may order a person who violates this part or the rules promulgated under this part to restore, or to pay to the state an amount equal to the cost of restoring, the natural resources of this state affected by the violation to their original condition before the violation, and to pay to the state the costs of surveillance and enforcement incurred by the state as a result of the violation.

(4) In addition to any other relief provided by this section, the court shall order a person who violates section 11526e to return, or to pay to the state an amount equal to the cost of returning, the solid waste that is the subject of the violation to the country in which that waste was generated.

(5) This part does not preclude any person from commencing a civil action based on facts that may also constitute a violation of this part or the rules promulgated under this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 41, Imd. Eff. Mar. 29, 2004;—Am. 2006, Act 56, Imd. Eff. Mar. 13, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11547 Grant program; establishment; purpose; interlocal agreements; separate planning grant; appropriation; use of grant funds by department; rules; financial assistance to certified health department.**

Sec. 11547. (1) In order for a county to effectively implement the planning responsibilities designated under this part, a grant program is established to provide financial assistance to county or regional solid waste management planning agencies. Municipalities joined together with interlocal agreements relating to solid waste management plans, within a county having a city of a population of more than 750,000, are eligible for a separate planning grant in addition to those granted to counties. This separate grant allocation provision does not alter the planning and approval process requirements for county plans as specified in this part. Eighty percent of the money for the program not provided for by federal funds shall be appropriated annually by the legislature from the general fund of the state and 20% shall be appropriated by the applicant. Grant funds appropriated for local planning may be used by the department if the department finds it necessary to invoke the department's authority to develop a local plan under section 11533(6). The department shall promulgate rules for the distribution of the appropriated funds.

(2) In order for a certified health department to effectively implement the responsibilities designated under this part, an annual grant shall be appropriated by the legislature from the general fund of the state to provide financial assistance to a certified health department. A certified health department is eligible to receive 100% of reasonable personnel costs as determined by the department based on criteria established by rule. The department shall promulgate rules for the distribution of the appropriated funds.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 466, Imd. Eff. Jan. 4, 1999.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11548 Private sector; legislative intent; salvaging not prohibited.**

Sec. 11548. (1) This part is not intended to prohibit the continuation of the private sector from doing business in solid waste disposal and transportation. This part is intended to encourage the continuation of the private sector in the solid waste disposal and transportation business when in compliance with the minimum requirements of this part.

(2) This part is not intended to prohibit salvaging.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11549 Violation as misdemeanor; violation as felony; penalty; separate offenses.**

Sec. 11549. (1) A person who violates this part, a rule promulgated under this part, or a condition of a permit, license, or final order issued pursuant to this part is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 for each violation and costs of prosecution and, if in default of payment of fine and costs, imprisonment for not more than 6 months.

(2) A person who knowingly violates section 11526e is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(3) Each day upon which a violation described in this section occurs is a separate offense.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2006, Act 58, Imd. Eff. Mar. 13, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11550 Solid waste management fund; creation; deposit of money into fund; establishment of solid waste staff account and perpetual care account; expenditures; report.**

Sec. 11550. (1) The solid waste management fund is created within the state treasury. The state treasurer may receive money from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(2) Money in the solid waste management fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(3) The state treasurer shall establish, within the solid waste management fund, a solid waste staff account and a perpetual care account.

(4) Money shall be expended from the solid waste staff account, upon appropriation, only for the following purposes:

(a) Preparing generally applicable guidance regarding the solid waste permit and license program or its implementation or enforcement.

(b) Reviewing and acting on any application for a permit or license, permit or license revision, or permit or license renewal, including the cost of public notice and public hearings.

(c) Performing an advisory analysis under section 11510(1).

(d) General administrative costs of running the permit and license program, including permit and license tracking and data entry.

(e) Inspection of licensed disposal areas and open dumps.

(f) Implementing and enforcing the conditions of any permit or license.

(g) Groundwater monitoring audits at disposal areas which are or have been licensed under this part.

(h) Reviewing and acting upon corrective action plans for disposal areas which are or have been licensed under this part.

(i) Review of certifications of closure.

(j) Postclosure maintenance and monitoring inspections and review.

(k) Review of bonds and financial assurance documentation at disposal areas which are or have been licensed under this part.

(5) Money shall be expended from the perpetual care account only for the purpose of conducting the following activities at disposal areas which are or have been licensed under this part:

(a) Postclosure maintenance and monitoring at a disposal area where the owner or operator is no longer required to do so.

(b) To conduct closure, or postclosure maintenance and monitoring and corrective action if necessary, at a disposal area where the owner or operator has failed to do so. Money shall be expended from the account only after funds from any perpetual care fund or other financial assurance mechanisms held by the owner or operator have been expended and the department has used reasonable efforts to obtain funding from other sources.

(6) By March 1 annually, the department shall prepare and submit to the governor, the legislature, the

chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the activities of the previous fiscal year funded by the staff account of the solid waste management fund established in this section. This report shall include, at a minimum, all of the following as it relates to the department:

(a) The number of full-time equated positions performing solid waste management permitting, compliance, and enforcement activities.

(b) All of the following information related to the construction permit applications received under section 11509:

(i) The number of applications received by the department, reported as the number of applications determined to be administratively incomplete and the number determined to be administratively complete.

(ii) The number of applications determined to be administratively complete for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(iii) The percentage and number of applications determined to be administratively complete for which a final decision was made within 120 days of receipt as required by section 11511.

(c) All of the following information related to the operating license applications received under section 11512:

(i) The number of applications received by the department, reported as the number of applications determined to be administratively incomplete and the number determined to be administratively complete.

(ii) The number of applications determined to be administratively complete for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(iii) The percentage and number of applications determined to be administratively complete for which a final decision was made within 90 days of receipt as required by section 11516.

(d) The number of inspections conducted at licensed disposal areas as required by section 11519.

(e) The number of letters of warning sent to licensed disposal areas.

(f) The number of contested case hearings and civil actions initiated and completed, the number of voluntary consent orders and administrative orders entered or issued, and the amount of fines and penalties collected through such actions or orders.

(g) For each enforcement action that includes a penalty, a description of what corrective actions were required by the enforcement action.

(h) The number of solid waste complaints received, investigated, resolved, and not resolved by the department.

(i) The amount of revenue in the staff account of the solid waste management fund at the end of the fiscal year.

**History:** Add. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

## PART 117 SEPTAGE WASTE SERVICERS

### 324.11701 Definitions.

Sec. 11701. As used in this part:

(a) "Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown, including land used or suitable for use as a range or pasture; a sod farm; or a Christmas tree farm.

(b) "Certified health department" means a city, county, or district department of health certified under section 11716.

(c) "Cesspool" means a cavity in the ground that receives waste to be partially absorbed directly or indirectly by the surrounding soil.

(d) "Department" means the department of environmental quality or its authorized agent.

(e) "Director" means the director of the department of environmental quality or his or her designee.

(f) "Domestic septage" means liquid or solid material removed from a septic tank, cesspool, portable toilet, type III marine sanitation device, or similar storage or treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar



facility that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease interceptor, grease trap, or other appurtenance used to retain grease or other fatty substances contained in restaurant waste.

(g) "Domestic sewage" means waste and wastewater from humans or household operations.

(h) "Domestic treatment plant septage" means biosolids generated during the treatment of domestic sewage in a treatment works and transported to a receiving facility or managed in accordance with a residuals management program approved by the department.

(i) "Food establishment septage" means material pumped from a grease interceptor, grease trap, or other appurtenance used to retain grease or other fatty substances contained in restaurant wastes and which is blended into a uniform mixture, consisting of not more than 1 part of that restaurant-derived material per 3 parts of domestic septage, prior to land application or disposed of at a receiving facility.

(j) "Fund" means the septage waste program fund created in section 11717.

(k) "Governmental unit" means a county, township, municipality, or regional authority.

(l) "Incorporation" means the mechanical mixing of surface-applied septage waste with the soil.

(m) "Injection" means the pressurized placement of septage waste below the surface of soil.

(n) "Operating plan" means a plan developed by a receiving facility for receiving septage waste that specifies at least all of the following:

(i) Categories of septage waste that the receiving facility will receive.

(ii) The receiving facility's service area.

(iii) The hours of operation for receiving septage waste.

(iv) Any other conditions for receiving septage waste established by the receiving facility.

(o) "Pathogen" means a disease-causing agent. Pathogen includes, but is not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

(p) "Peace officer" means a sheriff or sheriff's deputy, a village or township marshal, an officer of the police department of any city, village, or township, any officer of the Michigan state police, any peace officer who is trained and certified pursuant to the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616, or any conservation officer appointed by the department or the department of natural resources pursuant to section 1606.

(q) "Portable toilet" means a receptacle for human waste temporarily in a location for human use.

(r) "Receiving facility" means a structure that is designed to receive septage waste for treatment at a wastewater treatment plant or at a research, development, and demonstration project authorized under section 11511b to which the structure is directly connected, and that is available for that purpose as provided for in an ordinance of the local unit of government where the structure is located or in an operating plan. Receiving facility does not include either of the following:

(i) A septic tank.

(ii) A structure or a wastewater treatment plant at which the disposal of septage waste is prohibited by order of the department under section 11708 or 11715b.

(s) "Receiving facility service area" or "service area" means the territory for which a receiving facility has the capacity and is available to receive and treat septage waste, subject to the following:

(i) Beginning October 12, 2005 and before the 2011 state fiscal year, the geographic service area of a receiving facility shall not extend more than 15 radial miles from the receiving facility.

(ii) After the 2010 state fiscal year, the geographic service area of a receiving facility shall not extend more than 25 radial miles from the receiving facility.

(t) "Sanitary sewer cleanout septage" means sanitary sewage or cleanout residue removed from a separate sanitary sewer collection system that is not land applied and that is transported by a vehicle licensed under this part elsewhere within the same system or to a receiving facility that is approved by the department.

(u) "Septage waste" means the fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin that is removed from a wastewater system. Septage waste consists only of food establishment septage, domestic septage, domestic treatment plant septage, or sanitary sewer cleanout septage, or any combination of these.

(v) "Septage waste servicing license" means a septage waste servicing license as provided for under sections 11703 and 11706.

(w) "Septage waste vehicle" means a vehicle that is self-propelled or towed and that includes a tank used to transport septage waste. Septage waste vehicle does not include an implement of husbandry as defined in section 21 of the Michigan vehicle code, 1949 PA 300, MCL 257.21.

(x) "Septage waste vehicle license" means a septage waste vehicle license as provided for under sections 11704 and 11706.

(y) "Septic tank" means a septic toilet, chemical closet, or other enclosure used for the decomposition of

domestic sewage.

(z) "Service" or "servicing" means cleaning, removing, transporting, or disposing, by application to land or otherwise, of septage waste.

(aa) "Site" means a location or locations on a parcel or tract, as those terms are defined in section 102 of the land division act, 1967 PA 288, MCL 560.102, proposed or used for the disposal of septage waste on land.

(bb) "Site permit" means a permit issued under section 11709 authorizing the application of septage waste to a site.

(cc) "Storage facility" means a structure that receives septage waste for storage but not for treatment.

(dd) "Tank" means an enclosed container placed on a septage waste vehicle to carry or transport septage waste.

(ee) "Type I public water supply", "type IIa public water supply", "type IIb public water supply", and "type III public water supply" mean those terms, respectively, as described in R 325.10502 of the Michigan administrative code.

(ff) "Type III marine sanitation device" means that term as defined in 33 CFR 159.3.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2005, Act 199, Eff. Nov. 22, 2005.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11702 Septage waste licensing; requirement.**

Sec. 11702. (1) A person shall not engage in servicing or contract to engage in servicing except as authorized by a septage waste servicing license and a septage waste vehicle license issued by the department pursuant to part 13. A person shall not contract for another person to engage in servicing unless the person who is to perform the servicing has a septage waste servicing license and a septage waste vehicle license.

(2) The septage waste servicing license and septage waste vehicle license requirements provided in this part are not applicable to a publicly owned receiving facility subject to a permit issued under part 31 or section 11511b.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2005, Act 199, Eff. Nov. 22, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11703 Septage waste servicing license; application; eligibility; records.**

Sec. 11703. (1) An application for a septage waste servicing license shall include all of the following:

(a) The applicant's name and mailing address.

(b) The location or locations where the business is operated, if the applicant is engaged in the business of servicing.

(c) Written approval from all receiving facilities where the applicant plans to dispose of septage waste.

(d) The locations of the sites where the applicant plans to apply septage waste to land and, for each proposed site, either proof that the applicant owns the proposed site or written approval from the site owner.

(e) A written plan for disposal of septage waste obtained in the winter, if the disposal will be by a method other than delivery to a receiving facility or, subject to section 11711, application to land.

(f) Written proof of satisfaction of the continuing education requirements of subsection (2), if applicable.

(g) Any additional information pertinent to this part required by the department.

(h) Payment of the septage waste servicing license fee as provided in section 11717b.

(2) Beginning January 1, 2007, a person is not eligible for an initial servicing license unless the person has successfully completed not less than 10 hours of continuing education during the 2-year period before applying for the license. Beginning January 1, 2007 and until December 31, 2009, a person is not eligible to renew a servicing license unless the person has successfully completed not less than 10 hours of continuing education during the 2-year period preceding the issuance of the license. Beginning January 1, 2010, a person is not eligible to renew a servicing license unless the person has successfully completed not less than 30 hours of continuing education during the 5-year period preceding the issuance of the license.

(3) Before offering or conducting a course of study represented to meet the educational requirements of subsection (2), a person shall obtain approval from the department. The department may suspend or revoke the approval of a person to offer or conduct a course of study to meet the requirements of subsection (2) for a violation of this part or of the rules promulgated under this part.

(4) If an applicant or licensee is a corporation, partnership, or other legal entity, the applicant or licensee

shall designate a responsible agent to fulfill the requirements of subsections (2) and (3). The responsible agent's name shall appear on any license or permit required under this part.

(5) A person engaged in servicing shall maintain at all times at his or her place of business a complete record of the amount of septage waste that the person has transported or disposed of, the location at which septage waste was disposed of, and any complaints received concerning disposal of the septage waste. The person shall also report this information to the department on an annual basis in a manner required by the department.

(6) A person engaged in servicing shall maintain records required under subsection (5) or 40 CFR part 503 for at least 5 years. A person engaged in servicing or an individual who actually applies septage waste to land, as applicable, shall display these records upon the request of the director, a peace officer, or an official of a certified health department.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11704 Septage waste vehicle license; application; display; transportation of hazardous waste.**

Sec. 11704. (1) An application for a septage waste vehicle license shall include all of the following:

(a) The model and year of the septage waste vehicle.

(b) The capacity of any tank used to remove or transport septage waste.

(c) The name of the insurance carrier for the septage waste vehicle.

(d) Whether the septage waste vehicle or any other vehicle owned by the person applying for the septage waste vehicle license will be used at any time during the license period for land application of septage waste.

(e) Any additional information pertinent to this part required by the department.

(f) A septage waste vehicle license fee as provided by section 11717b for each septage waste vehicle.

(2) A person who is issued a septage waste vehicle license shall carry a copy of that license at all times in each vehicle that is described in the license and display the license upon the request of the department, a peace officer, or an official of a certified health department.

(3) A septage waste vehicle shall not be used to transport hazardous waste regulated under part 111 or liquid industrial waste regulated under part 121, without the express written permission of the department.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11705 Septage waste vehicle, tank, and accessory equipment; requirements.**

Sec. 11705. A tank upon a septage waste vehicle shall be closed in transit to prevent the release of septage waste and odor. The septage waste vehicle and accessory equipment shall be kept clean and maintained in a manner that prevents environmental damage or harm to the public health.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11706 Review of applications; providing health department with copies of application materials; investigations; issuance of license; license nontransferable; duration of license.**

Sec. 11706. (1) Upon receipt of an application for a septage waste servicing license or a septage waste vehicle license, the department shall review the application to ensure that it is complete. If the department determines that the application is incomplete, the department shall promptly notify the applicant of the deficiencies. If the department determines that the application is complete, the department shall promptly provide the appropriate certified health department with a copy of all application materials. Upon receipt of the application materials, a certified health department shall conduct investigations necessary to verify that the sites, the servicing methods, and the septage waste vehicles are in compliance with this part. If so, the department shall approve the application and issue the license applied for in that application. If a certified health department does not exist, the department may perform the functions of a certified health department as necessary.

(2) A septage waste servicing license is not transferable and is valid, unless suspended or revoked, for 5 years. A septage waste vehicle license is not transferable and is valid, unless suspended or revoked, for the

same 5-year period as the licensee's septage waste servicing license.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11707 Display on both sides of septage waste vehicle.**

Sec. 11707. Each septage waste vehicle for which a septage waste vehicle license has been issued shall display on both sides of the septage waste vehicle in letters not less than 2 inches high the words "licensed septage hauler", the vehicle license number issued by the department, and a seal furnished by the department that designates the year the septage waste vehicle license was issued.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11708 Deposit of septage waste in public septage waste treatment facility; disposal fee; prohibiting operation of wastewater treatment plant.**

Sec. 11708.

(1) Before 1 year after the effective date of the 2004 amendatory act that added this subsection, if a person is engaged in servicing in a receiving facility service area not more than 15 road miles from that receiving facility, that person shall dispose of the septage waste at that receiving facility or another receiving facility in whose service area the person is engaged in servicing.

(2) Subsection (1) does not apply to a person engaged in servicing who owns a storage facility with a capacity of 50,000 gallons or more.

(3) Beginning 1 year after the effective date of the 2004 amendatory act that added this subsection, if a person is engaged in servicing in a receiving facility service area, that person shall dispose of the septage waste at that receiving facility or any other receiving facility within whose service area the person is engaged in servicing.

(4) If a person engaged in servicing owns a storage facility with a capacity of 50,000 gallons or more and the storage facility was constructed, or authorized by the department to be constructed, before the location where the person is engaged in servicing was included in a receiving facility service area under an operating plan approved under section 11715b, subsection (3) does not apply to that person before the 2025 state fiscal year.

(5) A receiving facility may charge a fee for receiving septage waste. Before 1 year after the effective date of the 2004 amendatory act that added this subsection, the fee shall not exceed the actual costs related to the treatment and storage of the waste. Beginning 1 year after the effective date of the 2004 amendatory act that added this subsection, the fee shall not exceed the actual costs of operating the receiving facility including the reasonable cost of doing business as defined by common accounting practices.

(6) The department may issue an order prohibiting the operation of a wastewater treatment plant or structure as a receiving facility due to excessive hydraulic or organic loading, odor problems, or other environmental or public health concerns.

(7) A person shall not dispose of septage waste at a wastewater treatment plant or structure if the operation of that wastewater treatment plant or structure as a receiving facility is prohibited by an order issued under subsection (6) or section 11715b.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11709 Disposal of septage waste on land; permit required; additional information; notice; renewal; revocation of permit.**

Sec. 11709.

(1) A person shall not dispose of septage waste on land except as authorized by a site permit for that site issued by the department pursuant to part 13. A person shall apply for a site permit using an application form provided by the department. The application shall include all of the following for each site:

(a) A map identifying the site from a county land atlas and plat book.

(b) The site location by latitude and longitude.

(c) The name and address of the land owner.

(d) The name and address of the manager of the land, if different than the owner.

(e) Results of a soil fertility test performed within 1 year before the date of the application for a site permit including analysis of a representative soil sample of each location constituting the site as determined by the Bray P1 (Bray and Kurtz P1), or Mehlich 3 test, for which procedures are described in the publication entitled "Recommended chemical soil test procedures for the north central region". The department shall provide a copy of this publication to any person upon request at no cost. The applicant shall also provide test results from any additional test procedures that were performed on the soil.

(f) Other site specific information necessary to determine whether the septage waste disposal will comply with state and federal law.

(g) Payment of the site permit fee as provided under section 11717b.

(2) Upon receipt of an application under subsection (1), the department shall review the application to ensure that it is complete. If the department determines that the application is incomplete, it shall promptly notify the applicant of the deficiencies.

(3) An applicant for a site permit shall simultaneously send a notice of the application, including all the information required by subsection (1)(a) to (d), to all of the following:

(a) The certified health department having jurisdiction.

(b) The clerk of the city, village, or township where the site is located.

(c) Each person who owns a lot or parcel that is contiguous to the lot, parcel, or tract on which the proposed site is located or that would be contiguous except for the presence of a highway, road, or street.

(d) Each person who owns a lot or parcel that is within 150 feet of a location where septage waste is to be disposed of by injection or 800 feet of a location where septage waste is to be disposed of by surface application.

(4) If the department finds that the applicant is unable to provide notice as required in subsection (3), the department may waive the notice requirement or allow the applicant to use a substitute means of providing notice.

(5) The department shall issue a site permit if all the requirements of this part and federal law are met. Otherwise, the department shall deny the site permit.

(6) A site permit is not transferable and is valid, unless suspended or revoked, until the expiration of the permittee's septage waste servicing license. A site permit may be revoked by the department if the septage waste land application or site management is in violation of this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11710 Requirements to which permit subject.**

Sec. 11710. A site permit is subject to all of the following requirements:

(a) The septage waste disposed of shall be applied uniformly at agronomic rates.

(b) Not more than 1 person licensed under this part may use a site for the disposal of septage waste during any year.

(c) Septage waste may be disposed of by land application only if the horizontal distance from the applied septage waste and the features listed in subparagraphs (i) to (ix) equals or exceeds the following isolation distances:

<u>TYPE OF APPLICATION</u>		
	<u>Surface</u>	<u>Injection</u>
(i) Type I public water supply wells	2,000 feet	2,000 feet
(ii) Type IIa public water supply wells	2,000 feet	2,000 feet
(iii) Type IIb public water supply wells	800 feet	800 feet



(iv) Type III public water supply wells	800 feet	150 feet
(v) Private drinking water wells	800 feet	150 feet
(vi) Other water wells	800 feet	150 feet
(vii) Homes or commercial buildings	800 feet	150 feet
(viii) Surface water	500 feet	150 feet
(ix) Roads or property lines	200 feet	150 feet

(d) Septage waste disposed of by land application shall be disposed of either by surface application, subject to subdivision (g), or injection.

(e) If septage waste is applied to the surface of land, the slope of that land shall not exceed 6%. If septage waste is injected into land, the slope of that land shall not exceed 12%.

(f) Septage waste shall not be applied to land unless the water table is at least 30 inches below any applied septage waste.

(g) If septage waste is applied to the surface of the land, 1 of the following requirements is met:

(i) The septage waste shall be mechanically incorporated within 6 hours after application.

(ii) The septage waste shall have been treated to reduce pathogens prior to land disposal by aerobic or anaerobic digestion, lime stabilization, composting, air drying, or other process or method approved by the department and, if applied to fallow land, is mechanically incorporated within 48 hours after application, unless public access to the site is restricted for 12 months and no animals whose products are consumed by humans are allowed to graze on the site for at least 1 month following disposal.

(h) Septage waste shall be treated to reduce pathogens by composting, heat drying or treatment, thermophilic aerobic digestion, or other process or method approved by the department prior to disposal on lands where crops for direct human consumption are grown, if contact between the septage waste and the edible portion of the crop is possible.

(i) Vegetation shall be grown on a septage waste disposal site within 1 year after septage waste is disposed of on that site.

(j) Food establishment septage shall not be applied to land unless it has been combined with other septage waste in no greater than a 1 to 3 ratio and blended into a uniform mixture.

(k) The permittee shall not apply septage waste to a location on the site unless the permittee has conducted a soil fertility test of that location as described in section 11709 within 1 year before the date of the land application. The permittee shall not apply food establishment septage to a location on the site unless the permittee has conducted testing of soil in that location within 1 year before the date of application in accordance with requirements in 40 CFR 257.3 to 257.5 or a single test of mixed septage waste contained in a storage facility.

(l) Beginning 2 years after the effective date of the 2004 amendatory act that amended this section, before land application, domestic septage shall be screened through a screen of not greater than 1/2-inch mesh or through slats separated by a gap of not greater than 3/8 inch. Screenings shall be handled as solid waste under part 115. Instead of screening, the domestic septage may be processed through a sewage grinder designed to not pass solids larger than 1/2 inch in diameter.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11711 Surface application of septage waste to frozen ground; requirements.**

Sec. 11711. Beginning 2 years after the effective date of the 2004 amendatory act that amended this section, a person shall not surface apply septage waste to frozen ground. Before that time, a person shall not surface apply septage waste to frozen ground unless all of the following requirements are met:

(a) Melting snow or precipitation does not result in the runoff of septage waste from the site.

(b) The slope of the land is less than 2%.

(c) The pH of septage waste is raised to 12.0 (at 25 degrees Celsius) or higher by alkali addition and, without the addition of more alkali, remains at 12.0 or higher for 30 minutes. Other combinations of pH and

temperature may be approved by the department.

(d) The septage waste is mechanically incorporated within 20 days following the end of the frozen ground conditions.

(e) The department approves the surface application and subsequent mechanical incorporation.

(f) Less than 10,000 gallons per acre are applied to the surface during the period that the septage waste cannot be mechanically incorporated due to frozen ground.

(g) The septage waste is applied in a manner that prevents the accumulation and ponding of the septage waste.

(h) Any other applicable requirement under this part or federal law is met.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11712 Applicability of federal regulations.**

Sec. 11712. Persons subject to this part shall comply with applicable provisions of subparts A, B, and D of part 503 of title 40 of the code of federal regulations.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11713 Inspection of disposal site.**

Sec. 11713. (1) At any reasonable time, a representative of the department may enter in or upon any private or public property for the purpose of inspecting and investigating conditions relating to compliance with this part. However, an investigation or inspection under this subsection shall comply with the United States constitution, the state constitution of 1963, and this section.

(2) The department shall inspect septage waste vehicles at least annually.

(3) The department shall inspect a site at least annually.

(4) The department shall inspect a receiving facility within 1 year after that receiving facility begins operation and at least annually thereafter.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11714 Prohibited disposition of septage waste into certain bodies of water.**

Sec. 11714. A person shall not dispose of septage waste directly or indirectly in a lake, pond, stream, river, or other body of water.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11715 Preemption; duty of governmental unit to make available public septage waste treatment facility; posting of surety not required.**

Sec. 11715. (1) This part does not preempt an ordinance of a governmental unit that prohibits the application of septage waste to land within that governmental unit or otherwise imposes stricter requirements than this part.

(2) If a governmental unit requires that all septage waste collected in that governmental unit be disposed of in a receiving facility or prohibits, or effectively prohibits, the application of septage waste to land within that governmental unit, the governmental unit shall make available a receiving facility that can lawfully accept all septage waste generated within that governmental unit that is not lawfully applied to land.

(3) The owner or operator of a receiving facility may require the posting of a surety, including cash in an escrow account or a performance bond, not exceeding \$25,000.00 to dispose of septage waste in the receiving facility.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11715b Rules; requirements for receiving facilities and control of nuisance conditions;**

**notice of operation; penalties for noncompliance.**

Sec. 11715b. (1) The department shall promulgate rules establishing design and operating requirements for receiving facilities and the control of nuisance conditions.

(2) A person shall not commence construction of a receiving facility on or after the date on which rules are promulgated under subsection (1) unless the owner has a permit from the department authorizing the construction of the receiving facility. The application for a permit shall include a basis of design for the receiving facility, engineering plans for the receiving facility sealed by an engineer licensed to practice in Michigan, and any other information required by the department. If the proposed receiving facility will be part of a sewerage system whose construction is required to be permitted under part 41 or a research, development, and demonstration project whose construction and operation is required to be permitted under section 11511b, the permit issued under part 41 or part 115, respectively, satisfies the permitting requirement of this subsection.

(3) Subject to subsection (4), a person shall not operate a receiving facility contrary to an operating plan approved by the department.

(4) If the operation of a receiving facility commenced before October 12, 2004, subsection (3) applies to that receiving facility beginning October 12, 2005.

(5) Before submitting a proposed operating plan to the department for approval, a person shall do all of the following:

(a) Publish notice of the proposed operating plan in a newspaper of general circulation in the area where the receiving facility is located.

(b) If the person maintains a website, post notice of the proposed operating plan on its website.

(c) Submit notice of the proposed operating plan by first-class mail to the county health department and the legislative body of each city, village, and township located in whole or in part within the service area of the receiving facility.

(6) Notice of a proposed operating plan under subsection (5) shall contain all of the following:

(a) A statement that the receiving facility proposes to receive or, in the case of a receiving facility described in subsection (4), to continue to receive septage waste for treatment.

(b) A copy of the proposed operating plan or a statement where the operating plan is available for review during normal business hours.

(c) A request for written comments on the proposed operation of the receiving facility and the deadline for receipt of such comments, which shall be not less than 30 days after publication, posting, or mailing of the notice.

(7) After the deadline for receipt of comments under subsection (6), the person proposing to operate a receiving facility may modify the plan in response to any comments received and shall submit a summary of the comments and the current version of the proposed operating plan to the department for approval.

(8) The operator of a receiving facility may modify an approved operating plan if the modifications are approved by the department. Subsections (5) to (7) do not apply to the modification of the operating plan.

(9) If the owner or operator of a receiving facility violates this section or rules promulgated under this section, after providing an opportunity for a hearing, the department may order that a receiving facility cease operation as a receiving facility.

(10) The department shall post on its website both of the following:

(a) Approved operating plans, including any modifications under subsection (8).

(b) Notice of any orders under subsection (9).

(11) If construction of a receiving facility commenced before the date on which rules are promulgated under subsection (1), all of the following apply:

(a) Within 1 year after the date on which rules are promulgated under subsection (1), the owner of the receiving facility shall submit to the department and obtain department approval of a report prepared by a professional engineer licensed to practice in Michigan describing the receiving facility's state of compliance with the rules and proposing any modifications to the receiving facility necessary to comply with the rules.

(b) If, according to the report approved under subdivision (a), modifications to the receiving facility are necessary to comply with the rules promulgated under subsection (1), within 18 months after the report is approved under subdivision (a), the owner of the receiving facility shall submit to the department engineering plans for modifying the receiving facility and shall obtain a construction permit from the department for modifying the receiving facility.

(c) Within 3 years after the report is approved under subdivision (a), the owner of the receiving facility shall complete construction modifying the receiving facility so that it complies with those rules.

(12) After a hearing, the department may order that a receiving facility whose owner fails to comply with

this section cease operating as a receiving facility.

**History:** Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2005, Act 199, Eff. Nov. 22, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.11715d Advisory committee to make recommendations on septage waste storage facility management practices.**

Sec. 11715d. (1) Within 60 days after the effective date of the amendatory act that added this section, the department shall convene an advisory committee to make recommendations on septage waste storage facility management practices, including, but not limited to, storage facility inspections. The advisory committee shall include at least all of the following:

- (a) A storage facility operator.
- (b) A receiving facility operator.
- (c) A generator of septage waste.
- (d) A representative of township government.
- (e) A representative of an environmental protection organization.
- (f) A licensed Michigan septage waste hauler.

(2) Within 18 months after the effective date of this section, the department shall establish generally accepted septage storage facility management practices and post the management practices on the department's website.

(3) A person shall not construct a septage waste storage facility without written approval from the department.

**History:** Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Compiler's note:** For abolishment of the advisory committee on septage waste storage facility management practices and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-20, compiled at MCL 324.99912.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.11716 Certification of city, county, and district departments of health to carry out powers and duties.**

Sec. 11716. (1) The department may certify a city, county, or district health department to carry out certain powers and duties of the department under this part.

(2) If a certified health department does not exist in a city, county, or district or does not fulfill its responsibilities under this part, the department may contract with qualified third parties to carry out certain responsibilities of the department under this part in that city, county, or district.

(3) The department and each certified health department or third party that will carry out powers or duties of the department under this part shall enter a memorandum of understanding or contract describing those powers and duties and providing for compensation to be paid by the department from the fund to the certified health department or third party.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.11717 Septage waste site contingency fund; creation; authorization of expenditures.**

Sec. 11717. (1) There is created in the state treasury a septage waste site contingency fund. Interest earned by the septage waste contingency fund shall remain in the septage waste contingency fund unless expended as provided in subsection (2).

(2) The department shall expend money from the septage waste contingency fund, upon appropriation, only to defray costs of the continuing education courses under section 11703 that would otherwise be paid by persons taking the courses.

(3) The septage waste program fund is created within the state treasury.

(4) Fees and interest on fees collected under this part shall be deposited in the fund. In addition, promptly after the effective date of the 2004 amendatory act that amended this section, the state treasurer shall transfer to the septage waste program fund all the money in the septage waste compliance fund. The state treasurer may receive money or other assets from any other source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(5) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(6) The department shall expend money from the fund, upon appropriation, only for the enforcement and administration of this part, including, but not limited to, compensation to certified health departments or third parties carrying out certain powers and duties of the department under section 11716.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11717b Fees for persons engaged in septage waste servicing.**

Sec. 11717b. (1) The cost of administering this part shall be recovered by collecting fees from persons engaged in servicing. Fee categories and, subject to subsection (2), rates are as follows:

(a) The fee for a septage waste servicing license is \$200.00 per year.

(b) The fee for a septage waste vehicle license is as follows:

(i) If none of the vehicles owned by the person applying for the septage waste vehicle license will be used at any time during the license period for disposal of septage waste by land application, \$350.00 per year for each septage waste vehicle.

(ii) If any of the vehicles owned by the person applying for the septage waste vehicle license will be used at any time during the license period for disposal of septage waste by land application, \$480.00 per year for each septage waste vehicle.

(c) The fee to replace an existing septage waste vehicle under a septage waste vehicle license with a different septage waste vehicle under the same ownership, if the annual fee for that year has been paid under subdivision (b), is as follows:

(i) \$200.00 if the septage waste vehicle being replaced has been inspected for that year under section 11706.

(ii) \$150.00 if the vehicle being replaced has not been inspected for that year.

(d) The fee for a site permit is \$500.00. However, a person shall not be charged a fee to renew a site permit.

(2) If a fee under subsection (1) is paid for a license, permit, or approval but the application for the license or permit or the request for the approval is denied, the department shall promptly refund the fee.

(3) For each state fiscal year, a person possessing a septage waste servicing license and septage waste vehicle license as of January 1 of that fiscal year shall be assessed a septage waste servicing license fee and septage waste vehicle license fee as specified in this section. The department shall notify those persons of their fee assessments by February 1 of that fiscal year. Payment shall be postmarked by March 15 of that fiscal year.

(4) The department shall assess interest on all fee payments received after the due date. The amount of interest shall equal 0.75% of the payment due, for each month or portion of a month the payment remains past due. The failure by a person to timely pay a fee imposed by this section is a violation of this part.

(5) If a person fails to pay a fee required under this section in full, plus any interest accrued, by October 1 of the year following the date of notification of the fee assessment, the department may issue an order that revokes the license or permit held by that person for which the fee was to be paid.

(6) Fees and interest collected under this section shall be deposited in the fund.

**History:** Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2008, Act 492, Imd. Eff. Jan. 13, 2009.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11718 Rules.**

Sec. 11718. (1) The department shall promulgate rules that establish both of the following:

(a) Continuing education requirements under section 11706.

(b) Design and operating requirements for receiving facilities, as provided in section 11715b.

(2) The department may, in addition, promulgate rules that do 1 or more of the following:

(a) Add other materials and substances to the definition of septage waste.

(b) Add enclosures to the list of enclosures in the definition of septage waste under section 11701 the servicing of which requires a septage waste servicing license under this part.

(c) Specify information required on an application for a septage waste servicing license, septage waste vehicle license, or site permit.

(d) Establish standards or procedures for a department declaration under section 11708 that a wastewater



treatment plant or structure is unavailable as a receiving facility because of excessive hydraulic or organic loading, odor problems, or other factors.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11719 Violation or false statement as misdemeanor; penalties.**

Sec. 11719. (1) A person who violates section 11704, 11705, 11708, 11709, 11710, or 11711 is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$5,000.00, or both. A peace officer may issue an appearance ticket to a person for a violation of any of these sections.

(2) A person who knowingly makes or causes to be made a false statement or entry in a license application or a record required in section 11703 is guilty of a felony punishable by imprisonment for not more than 2 years, or a fine of not less than \$2,500.00 or more than \$25,000.00, or both.

(3) A person who violates this part or a license or permit issued under this part, except as provided in subsections (1) and (2), is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not less than \$1,000.00 and not more than \$2,500.00, or both.

(4) Each day that a violation described in subsection (1), (2), or (3) continues constitutes a separate violation.

(5) Upon receipt of information that the servicing of septage waste regulated by this part presents an imminent or substantial threat to the public health, safety, welfare, or the environment, after consultation with the director or a designated representative of the department of community health, the department, or a peace officer if authorized by law, shall do 1 or more of the following:

(a) Pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, summarily suspend a license issued under this part and afford the holder of the license an opportunity for a hearing within 7 days.

(b) Request that the attorney general commence an action to enjoin the act or practice and obtain injunctive relief upon a showing that a person is or has removed, transported, or disposed of septage waste in a manner that is or may become injurious to the public health, safety, welfare, or the environment.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11720 Temporary variance from act.**

Sec. 11720. (1) The director may grant a temporary variance from a requirement of this part added by the 2004 amendatory act that amended this part if all of the following requirements are met:

(a) The variance is requested in writing.

(b) The requirements of this part cannot otherwise be met.

(c) The variance will not create or increase the potential for a health hazard, nuisance condition, or pollution of surface water or groundwater.

(d) The activity or condition for which the variance is proposed will not violate any other part of this act.

(2) A variance granted under subsection (1) shall be in writing and shall be posted on the department's website.

**History:** Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

## **PART 119**

### **WASTE MANAGEMENT AND RESOURCE RECOVERY FINANCE**

#### **324.11901 Definitions.**

Sec. 11901. As used in this part:

(a) "Costs" means 1 or more of the following costs that may be chargeable to the waste management project as a capital cost under generally acceptable accounting principles:

(i) The cost or fair market value of the acquisition or construction of lands, property rights, utility extensions, disposal facilities, buildings, structures, fixtures, machinery, equipment, access roads, easements, and franchises.

(ii) Engineering, architectural, accounting, legal, organizational, marketing, financial, and other services.

(iii) Permits and licenses.

(iv) Interest on the financing of the waste management project during acquisition and construction and before the date of commencement of commercial operation of the waste management project, but for not more than 1 year after that date.

(v) Operating expenses of the waste management project before full earnings are achieved, but for not more than 1 year after that date.

(vi) A reasonable reserve for payment of principal and interest on an indebtedness to finance the cost of a waste management project.

(b) "Local authority" means an authority created under Act No. 179 of the Public Acts of 1947, being sections 123.301 to 123.310 of the Michigan Compiled Laws.

(c) "Municipality" means a county, city, township, village, or local authority, or a combination thereof.

(d) "Note" means a note issued by a municipality pursuant to this part.

(e) "Person" means an individual, firm, partnership, association, corporation, unincorporated joint venture, or trust, organized, permitted, or existing under the laws of this state or any other state, including a federal corporation, or a combination thereof, but excluding a municipality, special district having taxing powers, or other political subdivision of this state.

(f) "Revenue" means money or income received by a municipality as a result of activities authorized by this part, including loan repayments and interest on loan repayments; proceeds from the sale of real or personal property; interest payments on investments; rentals and other payments due and owing on account of an instrument, lease, contract, or agreement to which the municipality is a party; and gifts, grants, bestowals, or other moneys or payments to which a municipality is entitled under this part or other law.

(g) "Waste" means a discarded solid or semisolid material, including garbage, refuse, rubbish, ashes, liquid material, and other discarded materials generated by residential, commercial, agricultural, municipal, or industrial activities, including waste from sewage collected and treated in a municipal sewage system.

(h) "Waste management project" means 1 or more parts of a waste collection, transportation, disposal, or resource recovery system, including plants, works, systems, facility or transfer stations planned, designed, or financed under this part. Waste management project includes the extension or provision of utilities, steam generating and conveyance facilities, appurtenant machinery, equipment, and other capital facilities, other than off-site mobile vehicular equipment, if necessary for the operation of a project or portion of a project. Waste management project also includes necessary property rights, easements, interests, permits, and licenses.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11902 Powers of municipality generally.**

Sec. 11902. A municipality may do any of the following:

(a) Acquire by gift, purchase, or lease, construct, improve, remodel, repair, maintain, and operate, individually or jointly with a municipality or person, a waste management project; acquire private or public property by purchase, lease, gift, or exchange; and acquire private property when necessary by condemnation for public purposes pursuant to Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws, or other applicable law or charter.

(b) Impose rates, charges, and fees, and enter into contracts relative to the rates, charges, and fees with persons using a waste management project; and assign, convey, encumber, mortgage, pledge, or grant a security interest in the rates, charges, and fees or the right to impose rates, charges, and fees to a person or municipality for the purpose of securing a contract with a person or municipality or for the purpose of providing security or a source of payment for an indebtedness of a person or municipality, including bonds or notes, issued pursuant to the following acts, to finance the cost of a waste management project or in anticipation of revenues from a waste management project:

(i) The industrial development revenue bond act of 1963, Act No. 62 of the Public Acts of 1963, being sections 125.1251 to 125.1267 of the Michigan Compiled Laws.

(ii) The economic development corporation act, Act No. 338 of the Public Acts of 1974, being sections 125.1601 to 125.1636 of the Michigan Compiled Laws.

(iii) The Derezinski-Geerlings job development authority act, Act No. 301 of the Public Acts of 1975, being sections 125.1701 to 125.1770 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11903 Contracts for acquisition, construction, financing, and operation of waste**

**management project or for use of services of project; bids or proposals; negotiations; validity of contracts; pledge of full faith and credit; methods of paying pledged share of costs.**

Sec. 11903. (1) A municipality may enter into a contract with a person or municipality, providing for the acquisition, construction, financing, and operation of a waste management project or for the use of the services of a project. Notwithstanding the requirements of its municipal charter or ordinances, the municipality, following the receipt from persons of bids or proposals for a contract referred to in this section, may negotiate with 1 or more persons who have submitted the bids or proposals, permit those persons to modify their bids or proposals, and enter into a contract with 1 or more of those persons on the basis of a bid or proposal as modified. A contract executed pursuant to this section, regardless of whether the bidding on the contract occurred before July 12, 1978, shall be valid and binding on the parties. The municipality is authorized, but is not required, to pledge its full faith and credit for the payment of the obligation in the manner and times specified in the contract.

(2) To pay its pledged share of the costs of a waste management project or to secure its contract for the use of project services, a contracting municipality may use or pledge 1 or more, or a combination, of the following methods of raising necessary funds:

(a) If the full faith and credit of the municipality is pledged, the levy of a tax on taxable property by a municipality having the power to tax, which tax may be imposed without limitation as to rate or amount and may be imposed in addition to other taxes that the municipality is authorized to levy, but for not more than a rate or amount that is sufficient to pay its share or secure its contract.

(b) The levy and collection of rates or charges to users and beneficiaries of the service furnished by the waste management project.

(c) From money received or to be received from the imposition of taxes by the state and returned to the municipality, unless the use of the money for that purpose is expressly prohibited by the state constitution of 1963.

(d) From any other funds which may be validly used for that purpose.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.11904 Additional powers of municipality.**

Sec. 11904. A municipality may do any of the following:

(a) Include in a contract with a municipality or person provisions to the effect that the municipality will require all residential waste subject to its jurisdiction and police power under applicable law or charter and collected within its limits, whether by a municipality or person operating under contract with the municipality, to be disposed of at the waste management project. If so included, the municipality shall enact legislation with appropriate penalties to make the requirement effective. However, a township, by resolution, may disapprove the collection of waste within the township boundaries by a county.

(b) Provide by contract with a municipality or person for the ownership of a waste management project after all indebtedness with respect to the project has been retired.

(c) Provide that rates or charges to users and beneficiaries of the service furnished by the waste management project shall be a lien on the premises for which the services have been provided, and that amounts delinquent for 3 months or more may be certified annually to the proper tax assessing officer or agency of the municipality, to be entered upon the next tax roll against the premises to which the services have been rendered. The charges shall be collected and the lien enforced in the same manner as provided for the collection of taxes assessed upon the tax roll and the enforcement of a lien for unpaid taxes. The time and manner of certification and other details in respect to the collection of the rates and charges and the enforcement of the lien shall be prescribed by the governing body of the municipality. The municipality may authorize a person or municipality to impose, levy, and collect rates or charges against users and beneficiaries of the service furnished by the waste management project. The municipality may agree with a municipality or person that the rates and charges shall be a lien on the premises serviced, and may further agree that the collection of the rates and charges imposed may be collected and the lien enforced in the same manner as provided in this subsection for the collection of rates and charges and the enforcement of a lien by the municipality.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11905 Contracts; provisions; remedies in case of default.**

Sec. 11905. A contract by a municipality with a person or municipality may provide for any and all matters relating to the acquisition, construction, financing, and operation of the waste management project as are considered necessary. The contract may provide for appropriate remedies in case of default, including the right of the contracting municipality to authorize the state treasurer or other official charged with the disbursement of unrestricted state funds returnable to the municipality under the state constitution of 1963 or other laws of this state to withhold and apply sufficient funds from those disbursements to make up a default or deficiency.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11906 Resolution authorizing execution of contract; publication and contents of notice of adoption; effective date of contract; referendum; special election not included in statutory or charter limitation; verification of signatures on petition; rejection of signatures; determining number of registered electors.**

Sec. 11906. (1) A municipality desiring to enter into a contract under section 11902 or 11903 shall authorize, by resolution of its governing body, the execution of the contract. After the adoption of the resolution, if the full faith and credit of the municipality is pledged, a notice of the adoption of the resolution shall be published in a newspaper of general circulation in the municipality. The notice shall state all of the following:

(a) That the governing body has adopted a resolution authorizing execution of the contract.

(b) The purpose and the expected cost of the contract to the municipality.

(c) The source of payment for the municipality's contractual obligation.

(d) The right of referendum on the contract.

(e) Other information the governing body determines to be necessary to adequately inform interested electors of the nature of the obligation.

(2) A contract pledging the full faith and credit may be executed and delivered by the municipality upon approval of its governing body without a vote of the electors on the contract, but the contract shall not become effective until the expiration of 45 days after the date of publication of the notice required by subsection (1). If, within the 45-day period, a petition requesting a referendum upon the contract, signed by not less than 5% or 15,000 of the registered electors residing within the limits of the municipality, whichever is less, is filed with the clerk of the municipality, the contract shall not become effective until approved by the vote of a majority of the electors of the municipality qualified to vote and voting at a general or special election.

(3) A special election called for pursuant to subsection (2) shall not be included in statutory or charter limitation as to the number of special elections to be called within a specified period of time. Signatures on the petition shall be verified by an elector under oath as the actual signatures of the electors whose names appear on the petition, and the clerk of the municipality shall have the same power to reject signatures as city clerks under section 25 of the home rule city act, Act No. 279 of the Public Acts of 1909, being section 117.25 of the Michigan Compiled Laws. The number of registered electors in a municipality shall be determined from the municipality's registration books.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11907 Exercise of powers conferred on municipality.**

Sec. 11907. A municipality may exercise the powers conferred by this part regardless of the requirements, including the competitive bidding requirement, of its municipal charter.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.11908 Provisions inapplicable to certain municipalities.**

Sec. 11908. This part shall not apply to municipalities having a population of more than 2,000,000.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

PART 121  
LIQUID INDUSTRIAL WASTES

**324.12101 Definitions; B to L.**

Sec. 12101. As used in this part:

(a) "Biofuel" means any renewable liquid or gas fuel offered for sale as a fuel that is derived from recently living organisms or their metabolic by-products and meets applicable quality standards, including, but not limited to, ethanol, ethanol-blended fuel, biodiesel, and biodiesel blends.

(b) "Biogas" means a biofuel that is a gas.

(c) "Brine" means a liquid produced as a by-product of oil or natural gas production or exploration.

(d) "Container" means any portable device in which a liquid industrial waste is stored, transported, treated, or otherwise handled.

(e) "Department" means the department of environmental quality.

(f) "Designated facility" means a treatment facility, storage facility, disposal facility, or reclamation facility that receives liquid industrial waste from off-site.

(g) "Director" means the director of the department.

(h) "Discarded" means any of the following:

(i) Abandoned by being disposed of, burned, or incinerated; or accumulated, stored, or treated before, or instead of, being abandoned.

(ii) Accumulated, stored, or treated before being managed in 1 of the following ways:

(A) By being used or reused in a manner constituting disposal by being applied to or placed on land or by being used to produce products that are applied to or placed on land.

(B) By being burned to recover energy or used to produce a fuel.

(C) By reclamation.

(i) "Discharge" means the accidental or intentional spilling, leaking, pumping, releasing, pouring, emitting, emptying, or dumping of liquid industrial waste into the land, air, or water.

(j) "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking, or placing of a liquid industrial waste into or on land or water in such a manner that the liquid industrial waste may enter the environment, or be emitted into the air, or discharged into surface water or groundwater.

(k) "Disposal facility" means a facility or a part of a facility at which liquid industrial waste is disposed.

(l) "Facility" means all contiguous land and structures, other appurtenances, and improvements on land for treating, storing, disposing of, or reclamation of liquid industrial waste.

(m) "Generator" means a person whose act or process produces liquid industrial waste.

(n) "Liquid industrial waste" means any brine, by-product, industrial wastewater, leachate, off-specification commercial chemical product, sludge, sanitary sewer clean-out residue, storm sewer clean-out residue, grease trap clean-out residue, spill residue, used oil, or other liquid waste that is produced by, is incident to, or results from industrial, commercial, or governmental activity or any other activity or enterprise determined to be liquid by method 9095 (paint filter liquids test) as described in "Test methods for evaluating solid wastes, physical/chemical methods," United States environmental protection agency publication no. SW-846, and which is discarded. Liquid industrial waste does not include any of the following:

(i) Hazardous waste regulated and required to be manifested under part 111.

(ii) Septage waste regulated under part 117.

(iii) Medical waste regulated under part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13831.

(iv) A discharge to the waters of the state in accordance with a permit, order, or rule under part 31.

(v) A liquid generated by a household.

(vi) A liquid regulated under 1982 PA 239, MCL 287.651 to 287.683.

(vii) Material managed in accordance with section 12102a.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99903 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA



### **324.12102 Definitions; M to V.**

Sec. 12102. As used in this part:

(a) "Manifest" means either of the following:

(i) A form and instructions approved by the department used for identifying the quantity, composition, origin, routing, or destination of liquid industrial waste during its transportation from the point of generation to the point of disposal, treatment, storage, or reclamation.

(ii) For shipments of liquid industrial waste that are not generated or transported to a disposal facility, treatment facility, storage facility, or reclamation facility in this state, a United States environmental protection agency form number 8700-22 and 8700-22A, or its successor.

(b) "On-site" means on the same geographically contiguous property, which may be divided by a public or private right-of-way if access is by crossing rather than going along the right-of-way. On-site includes noncontiguous pieces of property owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access.

(c) "Peace officer" means any law enforcement officer who is trained and certified pursuant to the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616, or an officer appointed by the director of the department of state police pursuant to section 6d of 1935 PA 59, MCL 28.6d.

(d) "Publicly owned treatment works" means any entity that treats municipal sewage or industrial waste of a liquid nature that is owned by the state or a municipality, as that term is defined in 33 USC 1362. Publicly owned treatment works include sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

(e) "Reclamation" means either processing to recover a usable product or regeneration.

(f) "Reclamation facility" means a facility or part of a facility where liquid industrial waste reclamation is conducted.

(g) "Site identification number" means a number that is assigned by the United States environmental protection agency or the department to a generator, transporter, or facility. The department may assign a number to a person or a facility to cover multiple unstaffed sites that generate uniform types of liquid industrial waste.

(h) "Storage" means the containment of liquid industrial waste, on a temporary basis, in a manner that does not constitute disposal of liquid industrial waste.

(i) "Storage facility" means a facility or part of a facility where liquid industrial waste is stored.

(j) "Surface impoundment" means a treatment facility, storage facility, or disposal facility or part of a treatment, storage, or disposal facility that is either a natural topographic depression, a human-made excavation, or a diked area formed primarily of earthen materials. A surface impoundment may be lined with human-made materials designed to hold an accumulation of liquid waste or waste containing free liquids. Surface impoundments include, but are not limited to, holding, storage, settling, aeration pits, ponds, and lagoons. Surface impoundment does not include an injection well.

(k) "Tank" means a stationary device designed to contain an accumulation of liquid industrial waste that is constructed primarily of nonearthen materials such as wood, concrete, steel, or plastic to provide structural support.

(l) "Transportation" means the movement of liquid industrial waste by air, rail, public or private roadway, or water.

(m) "Transporter" means a person engaged in the off-site transportation of liquid industrial waste by air, rail, public roadway, or water.

(n) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any liquid industrial waste, to neutralize the waste, or to render the waste safer to transport, store, or dispose of, amenable to recovery, amenable to storage, or reduced in volume.

(o) "Treatment facility" means a facility or part of a facility at which liquid industrial waste undergoes treatment.

(p) "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and that, as a result of the use, is contaminated by physical or chemical impurities.

(q) "Vehicle" means a transport vehicle as defined by 49 CFR 171.8.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99903 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12102a Materials not specified as liquid industrial wastes.**

Sec. 12102a. The following materials are not liquid industrial wastes when managed as specified:

(a) A material that is used or reused as an effective substitute for commercial products or returned to the original process, if the material does not require reclamation prior to use or reuse, is not directly burned to recover energy or used to produce a fuel, and is not applied to the land or used in products applied to the land.

(b) A used oil that is directly burned to recover energy or used to produce a fuel if all of the following requirements are met:

(i) The material meets the used oil specifications of R 299.9809(1)(f) of the Michigan administrative code.

(ii) The material contains no greater than 2 ppm polychlorinated biphenyls.

(iii) The material has a minimum energy content of 17,000 BTU/lb.

(iv) The material is expressly authorized as a used oil fuel source, regulated under part 55, or, in another state, regulated under a similar air pollution control authority.

(c) A liquid fully contained inside a manufactured article, until the liquid is removed or the manufactured equipment is discarded, at which point it becomes subject to this part.

(d) A liquid waste sample transported for testing to determine its characteristics or composition. The sample becomes subject to this part when discarded.

(e) A liquid that is not regulated under part 615 that is generated in the drilling, operation, maintenance, or closure of a well, or other drilling operation, including the installation of cathodic protection or directional drilling, if either of the following applies:

(i) The liquid is left in place at the point of generation in compliance with part 31, 201, or 213.

(ii) The liquid is transported off-site from a location that is not a known facility as defined in section 20101, and all of the following occur:

(A) The disposal complies with applicable provisions of part 31 or 115.

(B) The disposal is not to a surface water.

(C) The landowner of the disposal site has authorized the disposal.

(f) A liquid vegetable or animal fat oil that is transported directly to a producer of biofuels for the purpose of converting the oil to biofuel.

(g) An off-specification fuel, including a gasoline blendstock, that was generated in a pipeline as the interface material from the mixture of 2 adjacent fuel products and that will be processed, by blending or by distillation or other refining, to produce a fuel product or fuel products.

(h) An off-specification fuel, including a gasoline blendstock, that resulted from the commingling of off-specification fuel products or from phase separation in a gasoline and alcohol blend and that will be processed, by distillation or other refining, to produce fuel products.

(i) An off-specification fuel product transported directly to a distillation or refining facility to produce a fuel product or fuel products regulated pursuant to 40 CFR part 80.

(j) A liquid or a sludge and associated liquid authorized to be applied to land under part 31 or 115.

(k) A liquid residue remaining in a container after pouring, pumping, aspirating, or another practice commonly employed to remove liquids has been utilized, if not more than 1 inch of residue remains on the bottom, or, for containers less than or equal to 110 gallons in size, not more than 3% by weight of residue remains in the container, or, for containers greater than 110 gallons in size, not more than 0.3% by weight of residue remains in the container. The liquid residue becomes subject to this part when discarded.

(l) A residual amount of liquid remaining in a container and generated as a result of transportation of a solid waste in that container.

(m) A liquid brine authorized for use as dust and ice control regulated under parts 31 and 615.

(n) Food processing residuals as defined in section 11503, or site-separated material or source-separated material approved by the department under part 115, that, to produce biogas, will be decomposed in a controlled manner under anaerobic conditions using a closed system that complies with part 55.

(o) A liquid approved by the director for use as a biofuel in energy production in compliance with part 55 that is not speculatively accumulated and that is transported directly to the burner of the biofuel.

**History:** Add. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2008, Act 153, Imd. Eff. June 5, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12103 Generator; duties.**

Sec. 12103. (1) A generator shall do all of the following:

(a) Characterize the waste in accordance with section 12101(n) and the requirements of part 111 and rules promulgated under that part, and maintain records of the characterization.

(b) Obtain and utilize, when needed for transportation, a site identification number. Until October 1, 2011, the department shall assess a site identification number user charge of \$50.00 for each site identification number it issues. The department shall not issue a site identification number under this subdivision unless the site identification number user charge and the tax identification number for the person applying for the site identification number have been received. Money collected under this subdivision shall be forwarded to the state treasurer for deposit into the environmental pollution prevention fund created in section 11130 and credited to the hazardous waste and liquid industrial waste users account created in section 11130(5).

(c) If transporting liquid industrial waste, other than the generator's own waste, by public roadway, engage, employ, or contract for the transportation only with a transporter registered and permitted under the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480.

(d) Except as otherwise provided in this part, utilize and retain a separate manifest for each shipment of liquid industrial waste transported to a designated facility. The department may authorize the use of a consolidated manifest for waste loads that are multiple pickups of uniform types of wastes that constitute a single shipment of waste. If a consolidated manifest is authorized by the department and utilized by a generator, a receipt shall be obtained from the transporter documenting the transporter's company name, driver's signature, date of pickup, type and quantity of waste accepted from the generator, the consolidated manifest number, and the designated facility. A generator of brine may complete a single manifest per transporter of brine, per disposal well, each month.

(e) Submit a copy of the manifest to the department by the tenth day after the end of the month in which a load of waste is transported.

(f) Certify that at the time the transporter picks up liquid industrial waste the information contained on the manifest is factual by signing the manifest. This certification is to be by the generator or his or her authorized representative.

(g) Provide to the transporter the signed copies of the manifest to accompany the liquid industrial waste to the designated facility.

(h) If a copy of the manifest, with a handwritten signature of the owner or operator of the designated facility or his or her authorized representative, is not received within 35 days after the date the waste was accepted by the initial transporter, contact the transporter or owner or operator of the designated facility, or both, to determine the status of the waste.

(i) Submit an exception report to the department if a copy of the manifest is not received with the handwritten signature of the owner or operator of the designated facility or his or her authorized representative within 45 days after the date the waste was accepted by the initial transporter. The exception report shall include both of the following:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery.

(ii) A cover letter signed by the generator explaining the efforts taken to locate the waste and the results of those efforts.

(2) A generator who operates an on-site reclamation facility, treatment facility, or disposal facility shall keep records of all liquid waste produced and reclaimed, treated, or disposed of at his or her facility.

(3) A generator shall retain all records required pursuant to this part for a period of at least 3 years, and shall make those records readily available for review and inspection by the department or a peace officer. The retention period required by this subsection is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as otherwise required by the department.

(4) A generator transporting its own waste in quantities of 55 gallons or less is not subject to manifest requirements if all of the following conditions are met:

(a) The waste is accompanied by a record showing the source and quantity of the waste and the designated facility where the waste is being transported.

(b) The generator obtains a signature from the designated facility acknowledging receipt of the waste and provides a copy of the record of shipment to the designated facility.

(c) The generator retains a copy of the record of shipment as part of the generator records.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99903 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

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Page 91

Michigan Compiled Laws Complete Through PA 242 of 2009

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### **324.12104 Repealed. 1998, Act 140, Eff. Sept. 1, 1998.**

**Compiler's note:** The repealed section pertained to licensing requirements for transportation of liquid industrial wastes.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12105 Registered and permitted transporter; generator; exemptions.**

Sec. 12105. (1) A transporter is subject to the registration and permitting requirements of the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480. A transporter registered and permitted under that act and licensed under part 117 shall comply with all of the following:

(a) All registration and permitting requirements of the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480, and licensing requirements of this part and part 117 shall be met.

(b) Septage waste or liquid industrial waste transported in a vehicle managed under part 117 and this part shall not be disposed of on land.

(c) All waste, including septage waste, transported in a vehicle managed under part 117 and this part, shall be manifested pursuant to the requirements of sections 12103, 12109, and 12112.

(d) In addition to the requirements of this part and part 117, the words "Land Application Prohibited", in a minimum of 2-inch letters, shall be affixed in a conspicuous location and visible on both sides of the vehicle used to transport waste under part 117 and this part.

(2) A generator, subject to the reporting requirements under part C of title XIV of the public health service act, 42 USC 300h to 300h-8, and regulations promulgated under that act, who transports brine, generated on property he or she owns or holds an interest in, to the generator's own disposal well is exempt from the provisions of this part regarding manifests.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12106 Equipment, location, and methods of transporter; inspection by department.**

Sec. 12106. The department may conduct an inspection to verify that the equipment, location, and methods of a transporter are adequate to effectuate service under this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12107 Vehicles; copy of registration and permit to be carried; closing or covering of vehicles; cleaning and decontamination; applicability of subsection (3) to vehicle transporting brine.**

Sec. 12107. (1) A vehicle used to transport liquid industrial waste by public roadway shall carry a copy of the registration and permit issued in accordance with the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480, and shall produce it upon request of the department or peace officer.

(2) All vehicles and containers used to transport liquid industrial waste shall be closed or covered to prevent the escape of liquid industrial waste. The outside of all vehicles, containers, and accessory equipment shall be kept free of liquid industrial waste and its residue.

(3) To avoid cross-contamination, all portions of a vehicle or equipment that have been in contact with liquid industrial waste shall be cleaned and decontaminated before the transport of any products, incompatible waste, hazardous waste regulated under part 111, or other material. Before the transport of liquid industrial waste, all portions of a vehicle or equipment shall be cleaned and decontaminated, as necessary, of any hazardous waste regulated under part 111. A transporter who owns or legally controls a vehicle or equipment shall maintain as part of the transporter's records documentation that before its use for the transportation of any products, incompatible waste, hazardous waste regulated under part 111, or other material, the vehicle or equipment was decontaminated. This subsection does not apply to a vehicle if brine was transported in the vehicle and the next load transported in the vehicle is brine for disposal or well drilling or production purposes, oil or other hydrocarbons produced from an oil or gas well, or water or other fluids to be used in activities regulated under part 615 or the rules, orders, or instructions under that part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12108 Repealed. 1998, Act 140, Eff. Sept. 1, 1998.**

**Compiler's note:** The repealed section pertained to denial, revocation, or suspension of license.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12109 Manifest; requirements.**

Sec. 12109. (1) A liquid industrial waste transporter shall certify acceptance of waste for transportation by completing the transporter section of the manifest, and shall deliver the liquid industrial waste and accompanying manifest only to the designated facility specified by the generator on the manifest.

(2) The liquid industrial waste transporter shall retain all records required pursuant to this part for a period of at least 3 years, and shall make those records readily available for review and inspection by the department or a peace officer. The retention period required in this subsection is automatically extended during the course of any unresolved enforcement action regarding an activity regulated under this part or as required by the department.

(3) The department may authorize, for certain waste streams, the use of a consolidated manifest as authorized under section 12103(1)(d). If a consolidated manifest is authorized by the department and utilized by a generator, the transporter shall give to the generator a receipt documenting the transporter's company name, driver's signature, date of pickup, type and quantity of waste removed, the consolidated manifest number, and the designated facility.

(4) A transporter shall maintain a trip log for consolidated manifest shipments and for brine shipments. The transporter shall do all of the following:

(a) Identify on the trip log the consolidated manifest number, the generator, date of pickup, type and quantity of waste, and the designated facility location for each shipment of waste.

(b) Keep a copy of all trip logs available during transportation, at a minimum, for the current shipment in transportation and retain these records as specified in subsection (2).

(c) Obtain and utilize a site identification number assigned by the United States environmental protection agency or the department. Until October 1, 2011, the department shall assess a site identification number user charge of \$50.00 for each site identification number it issues. The department shall not issue a site identification number under this subdivision unless the site identification number user charge and the tax identification number for the person applying for the site identification number have been received. Money collected under this subdivision shall be forwarded to the state treasurer for deposit into the environmental pollution prevention fund created in section 11130 and credited to the hazardous waste and liquid industrial waste users account created in section 11130(5).

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12110 Repealed. 1998, Act 140, Eff. Sept. 1, 1998.**

**Compiler's note:** The repealed section pertained to proof of financial responsibility.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12111 Incidents threatening public health, safety, and welfare, or environment; duties of generator, transporter, or owner or operator of facility; exemptions.**

Sec. 12111. (1) If a fire, explosion, or discharge of liquid industrial waste occurs that could threaten the public health, safety, and welfare, or the environment, or when a generator, transporter, or owner or operator of a designated facility first has knowledge that a spill has reached surface water or groundwater, the generator, transporter, or owner or operator of the designated facility shall take appropriate immediate action to protect the public health, safety, and welfare, and the environment, including notification of local authorities and the pollution emergency alerting system using the telephone number 800-292-4706, unless the incident is reported under another state law.

(2) The generator, transporter, or owner or operator of a designated facility shall, within 30 days, prepare and maintain as part of his or her records a written report documenting the incident and the response action taken, including any supporting analytical data and cleanup activities. The report shall be provided to the department upon request. Both the initial notification, as appropriate, and the report shall include all of the following information:



- (a) The name and telephone number of the person reporting the incident.
  - (b) The name, address, telephone number, and identification number of the generator, transporter, or designated facility.
  - (c) The date, time, and type of incident.
  - (d) The name and quantity of waste involved and discharged.
  - (e) The extent of injuries, if any.
  - (f) The estimated quantity and disposition of recovered materials that resulted from the incident, if any.
  - (g) An assessment of actual or potential hazards to human health or the environment.
  - (h) The response action taken.
- (3) Incidents occurring in connection with activities regulated under part 615 or the rules, orders, or instructions under that part or regulated under part C of title XIV of the public health service act, 42 USC 300h to 300h-8, or the regulations promulgated under that act are exempt from the requirements of this section.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12112 Facilities accepting liquid industrial waste; duties of owner or operator.**

Sec. 12112. (1) Except as provided in section 12103(4), the owner or operator of a facility that accepts liquid industrial waste shall accept delivery of waste at the designated facility only if delivery is accompanied by a manifest or consolidated manifest properly certified by the generator and the transporter and the facility is the destination indicated on the manifest. The facility owner or operator shall do all of the following:

(a) Obtain and utilize a site identification number either assigned from the United States environmental protection agency or the department. Until October 1, 2011, the department shall assess a site identification number user charge of \$50.00 for each site identification number it issues. The department shall not issue a site identification number under this subdivision unless the site identification number user charge and the tax identification number for the person applying for the site identification number have been received. Money collected under this subdivision shall be forwarded to the state treasurer for deposit into the environmental pollution prevention fund created in section 11130 and credited to the hazardous waste and liquid industrial waste users account created in section 11130(5).

(b) Certify on the manifest receipt of the liquid industrial waste by completing the facility section of the manifest and returning a signed copy of the manifest to the department within a period of 10 days after the end of the month for all liquid industrial waste received within the month.

(c) Return a signed copy of the manifest to the generator.

(d) Maintain records of the characterization of the waste. Characterization shall be in accordance with the requirements of part 111.

(2) All storage, treatment, and reclamation of liquid industrial waste at the designated facility shall be in either containers or tanks or as otherwise specified in section 12113(5). Storage, treatment, or reclamation regulated under part 615 or the rules, orders, or instructions promulgated under that part, or regulated under part C of title XIV of the public health service act, 42 USC 300h to 300h-8, or the regulations promulgated under that part are exempt from this subsection.

(3) The owner or operator of a designated facility shall not store liquid industrial waste for longer than 1 year unless the liquid industrial waste is being stored for purposes of reclamation and not less than 75% of the cumulative amount, by weight or volume, of each type of liquid industrial waste that is stored on site each calendar year is reclaimed or transferred to a different site for reclamation during that calendar year. The owner or operator of a designated facility shall maintain documentation that demonstrates compliance with this subsection.

(4) The owner or operator of a designated facility shall retain all records required pursuant to this part for a period of at least 3 years and shall make those records readily available for review and inspection by the department or a peace officer. The retention period required by this subsection is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12113 Treatment, storage, or disposal of liquid industrial waste; requirements.**

Sec. 12113. (1) Storage of liquid industrial waste, whether at the location of generation, under the control of the transporter, or at the designated facility, shall be protected from weather, fire, physical damage, and vandals. All vehicles, containers, and tanks used to hold liquid industrial waste shall be closed or covered, except when necessary to add or remove waste, to prevent the escape of liquid industrial waste. The exterior of all vehicles, containers, and tanks used to hold liquid industrial waste shall be kept free of liquid industrial waste and its residue.

(2) Except as otherwise authorized pursuant to this section or other applicable statutes or rules or orders of the department, liquid industrial waste shall be managed to prevent liquid industrial waste from being discharged into the soil, surface water or groundwater, or a drain or sewer, or discharged in violation of part 55.

(3) A person shall treat, store, and dispose of liquid industrial waste in accordance with all applicable statutes and rules and orders of the department.

(4) This part does not prevent a publicly owned treatment works from accepting liquid industrial waste from the premises of a person, and does not prevent a person from engaging, employing, or contracting with a publicly owned treatment works. However, a publicly owned treatment works that receives waste by means of transportation is a designated facility and shall comply with the requirements of section 12112.

(5) A person shall not treat, store, or dispose of liquid industrial waste in a surface impoundment, unless the surface impoundment has a discharge or storage permit authorized under part 31, or, in the case of leachate, is authorized in a permit issued under part 115.

(6) Activities regulated under part 615 or the rules, orders, or instructions under that part or regulated under part C of title XIV of the public health service act, 42 USC 300h to 300h-8, or the regulations promulgated under that act, are exempt from the requirements of this section.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12114 Violations; probable cause; powers of department or peace officer; court costs and other expenses; obtaining samples for purposes of enforcing or administering part.**

Sec. 12114. (1) If the department or a peace officer has probable cause to believe that a person is violating this part, the department or a peace officer may search without a warrant a vehicle or equipment that is possessed, used, or operated by that person. The department or a peace officer may seize a vehicle, equipment, or other property used or operated in a manner or for a purpose in violation of this part. A vehicle, equipment, or other property used in violation of this part is subject to seizure and forfeiture as provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

(2) The court may award court costs and other expenses of litigation including attorney fees to a party who successfully brings an action under this section.

(3) The department or peace officer may enter at reasonable times any generator, transporter, or designated facility or other place where liquid industrial wastes are or have been generated, stored, treated, or disposed of, or transported from and may inspect the facility or other place and obtain samples of the liquid industrial wastes and samples of the containers or labeling of the wastes for the purposes of enforcing or administering this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12115 Civil actions; damages; court costs and other expenses.**

Sec. 12115. (1) The attorney general or a person may bring a civil action in a court of competent jurisdiction to recover the full value of the damage done to the natural resources that are damaged or destroyed as a result of a violation of this part. The damages collected under this section shall be deposited in the general fund. However, if the damages result from the impairment or destruction of the fish, wildlife, or other natural resources of the state, the damages shall be deposited in the game and fish protection account of the Michigan conservation and recreation legacy fund provided in section 2010. The attorney general may, in addition, recover expenses incurred by the department to address and remedy a violation of this part that the department reasonably considered an imminent and substantial threat to the public health, safety, or welfare, or to the environment.

(2) The court may award court costs and other expenses of litigation including attorney fees to a party who

successfully brings an action pursuant to this section or to a person who successfully defends against an action brought under this section that the court determines is frivolous.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

**Compiler's note:** Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12116 Violations; penalties.**

Sec. 12116. (1) A person who violates section 12103(1)(b) or (e), 12105(1)(d), 12107(2) or (3), 12109(4), or 12112(1)(b) or (c) is guilty of a misdemeanor, punishable by imprisonment for not more than 30 days, or a fine of not less than \$200.00 and not more than \$500.00, or both. A peace officer may issue an appearance ticket to a person who is in violation of section 12103(1)(b) or (e), 12105(1)(d), 12107(2) or (3), 12109(4), or 12112(1)(b) or (c).

(2) A person who knowingly makes or causes to be made a false statement or entry in a license application or a manifest is guilty of a felony, punishable by imprisonment for not more than 2 years, or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(3) A person who violates this part or a license issued under this part, except as provided in subsections (1) and (2), is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months or a fine of not less than \$1,000.00 or more than \$2,500.00, or both.

(4) Each day that a violation continues constitutes a separate violation.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12117 Liquid industrial transporter waste account.**

Sec. 12117. (1) The liquid industrial transporter waste account is created within the environmental pollution prevention fund which is created in section 11130.

(2) The state treasurer may receive money or other assets from any source for deposit into the account. The state treasurer shall direct the investment of the account. The state treasurer shall credit to the account interest and earnings from account investments.

(3) Money remaining in the account at the close of the fiscal year shall not lapse to the general fund.

(4) The department shall expend money from the account, upon appropriation, for the implementation of this part. In addition, funds not expended from the account for the implementation of this part may be utilized for emergency response and cleanup activities related to liquid industrial waste that are initiated by the department.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.12118 Repealed. 1998, Act 140, Eff. Sept. 1, 1998.**

**Compiler's note:** The repealed section pertained to persons holding license on effective date of part.

**Popular name:** Act 451

**Popular name:** NREPA